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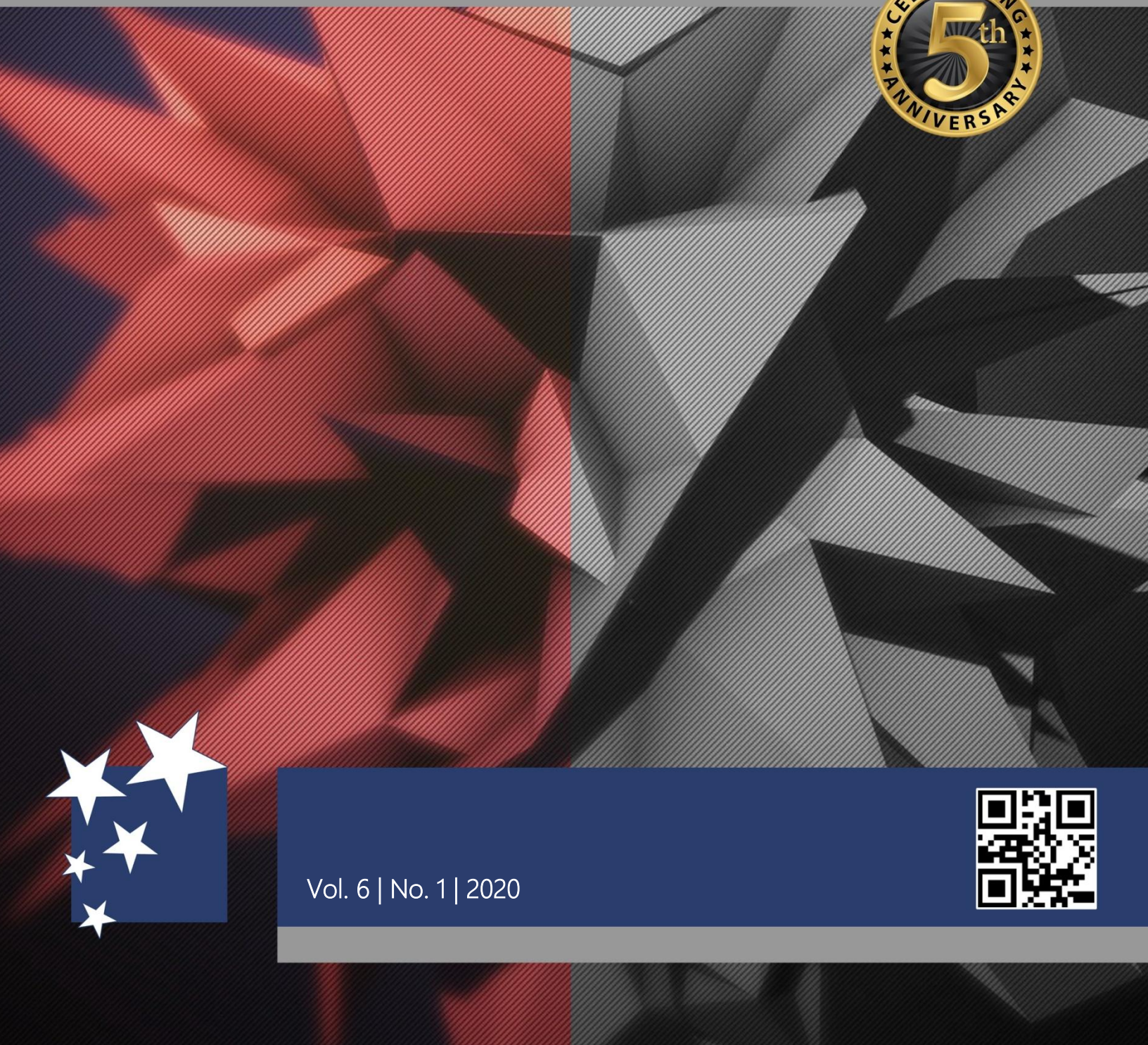

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MYANMAR'S FOREIGN STRATEGY TOWARD CHINA SINCE ROHINGYA CRISIS: CHANGES, OUTLOOK AND IMPLICATIONS

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Abstract: *Myanmar has crafted a neutral foreign policy since its colonial years to avoid leaning too much on any foreign power, but a spiraling political crisis at home is pushing it toward China as a buffer against international outrage. Myanmar faces charges of genocide against the Rohingya. China has backed Myanmar in the UN. In fact, China is in a similar situation. China is grappling with international criticism over perceived repression of ethnic Uighur people. Myanmar is exposed to various words and loud in the international community. So Myanmar wants to improve relations with China and is turning into an active cooperative attitude as a strategy to secure a friendly army. This paper shows how the diplomatic relations between Myanmar and China are changing, and how Myanmar's foreign strategy toward China is approaching. Also this article analyzes the outlook of diplomatic relations and the implications of the current situation.*

Keywords: *Rohingya; Myanmar-China relations; Belt and Road Initiative; Indo-Pacific Region*

INTRODUCTION

China's influence in Myanmar manifests on three different levels. At the bilateral level, the government and the military establishment of Myanmar receives diplomatic dividends for maintaining good ties with China. At the domestic political level, China's relations with the country's ethnic organizations make it an important stakeholder in the ongoing reconciliation process. Finally, at the economic level, a lack of alternatives makes Naypyidaw reliant on Chinese investments, thereby ensuring favorable policies towards China over the longer term, notwithstanding regime changes (Monish Tourangbam and Pawan Amin 2019). Myanmar's ruling military junta decided to open up to the West in 2011 in order to reduce its dependence on China, but the Rohingya crisis has pushed Myanmar back toward China. Suu Kyi has been heavily criticized for her silence, but China has shielded her regime in the UN by whittling down a Security Council statement drafted by the UK. Beijing also attempted to stop a Security Council briefing on the Rohingya issue and reduce the budget allocated for investigating the incidents in Rakhine state. Moreover, China has positioned itself as a mediator between Myanmar and Bangladesh, which agreed to the three-step solution to the Rakhine state problems as proposed by China: stop violence, start repatriation and promote development. Myanmar has crafted a neutral foreign policy since its colonial years to avoid leaning too much on any foreign power, but a spiraling political crisis at home is pushing it toward China as a buffer against international outrage because of Rohingya issue. Myanmar is the poor but quickly developing and it is trying to wipe out Muslim Rohingya people near its border with Bangladesh.

Myanmar faces charges of genocide against the mainly Muslim Rohingya minority group. In the same situation, China had backed Myanmar in the U.N. Security Council when a military junta ruled the country before 2011. Because China is grappling with international criticism over perceived repression of ethnic Uighur people who oppose living under Beijing's rule (Ralph Jennings 2019). Chinese Foreign Minister Wang Yi made a two-day visit to Myanmar at the invitation of State Counselor Daw Aung San Suu Kyi in 2019. The visit was made just before the State Counselor's departure next week to contest the genocide case against Myanmar at the International Court of Justice (ICJ) in the Netherlands. Myanmar authorities want to meet with the Chinese counterparts, because Myanmar is being isolated and alienated from the international community on the Rohingya issue. This Rohingya issue is now the single cause of Myanmar's lack of international credibility. In this state of Myanmar, questions arose about the change in Myanmar's diplomatic strategy toward China. How did diplomatic relations between China and Myanmar change before and after the Rohingya issue? How is the Myanmar government's diplomatic strategy approaching toward China in particular? As well, how can we anticipate bilateral relations in the future, and what implications does the change in diplomatic relations between the two countries have in the Indo-Pacific region?

With these research questions in mind, data for this paper was compiled from an exhaustive review of books, articles, and journalistic accounts of Rohingya affairs, in general, and Myanmar's foreign strategic change toward China, more specifically. Additionally, numerous Chinese-language source materials, including books, newspaper article, and government document were examined. In the end, I also found the status and honor literature in international relations to be a useful theoretical backdrop for this study.

Based upon this careful review, it appears that while China is looking to expand investment in Myanmar, the Myanmar government is seeking a new diplomatic strategy approach to breaking up the isolation from the international community as a result of recent Rohingya crisis. In this regard, this paper explores the changes of Myanmar's foreign strategy approach to China. This article proceeds in four steps. First it deals with the examination of the political changes in Myanmar and Myanmar-China economic relations. This is followed by an account and analysis of Rohingya crisis. The third section focuses on presenting the status of foreign strategy approach between Myanmar and China. The analysis of the future prospects for Myanmar-China relations and some implications for the Indo-Pacific region is made in the final section.

HISTORICAL AND GEOGRAPHICAL RELATIONS

Myanmar and China are inextricably linked by geography, history, ethnicity, culture, and economy. The original Myanmar tribe came down from Tibet and spawned the kings who united the kingdom of Bama or Myanmar in the XII century and became the dominant ethnic group of modern Burma, now formally known as Myanmar. The two countries share a land border of more than 1,300 miles, populated largely by tribes living on both sides of the border in Burma's eastern Shan and Kachin states and in China's southwestern Yunnan Province. Myanmar has a long and colorful historical relationship with China. Traditionally, the northern reaches of the country were subjected to large-scale migrations of Sino-Thai peoples who inhabited the northern Shan and Kachin states. Chinese emperors have also historically threatened Burmese kingdoms and sought to subjugate them within a web of neighboring vassal states in securing political compliance and tribute. Consequently, some measure of Myanmar's threat perceptions has traditionally originated from China.

These perceptions were held at bay when the country was colonized by the British, beginning in 1826 when they captured Arakan and Tenasselim after the conclusion of the First Anglo-Burmese War. The strong control exerted by the British over the country from the late nineteenth century and the colonizer's equally strong control in parts of China deflected this threat (Narayanan Ganesan 2018). Accordingly, Myanmar and China have generally enjoyed a cordial relationship since the modern boundaries were drawn during the British colonial era. Perhaps the major exception is when the PLA (People's Liberation Army) joined and supported the communist riots in Myanmar during the Chinese Cultural Revolution.

However, despite attacking the army against a communist riot in the northeast of the country, General Ne Win, then head of the Burmese military government, was careful to maintain the right relationship with China. He also worked closely with Soviet Union, China's enemy then and received military and other forms of support from the United States. Nevertheless, the period of confrontation with the PLA left a significant mark on the military successors of Newin, who had acquired all the scars of the battle to fight Chinese invaders.

After Deng Xiao Ping came to power, Chinese support for the communist insurgency in Burma was withdrawn and Beijing encouraged the Kokang, Kachin, Wa, and Mong La insurgent border groups to negotiate cease-fire agreements with the Burmese military government. As part of the ceasefire arrangements with the military regime, these tribes were assigned relative autonomy over areas of the Shan and Kachin states, which later became enshrined in the 2008 constitution (Clapp 2015).

THE MYANMAR'S POLITICAL CHANGE AND RELATIONS WITH CHINA

Myanmar, under the 2008 Constitution, strives for both internal legitimacy, and legitimacy in the eyes of the international community. At one time, tensions in relations with China have come to fore due to Myanmar's economic reform program and its expansion of external relations. But the new government in Myanmar took office in March 2011 and China sent its political adviser to Myanmar in April 2011.Jia Qinglin was the first foreign leader to visit Myanmar, soon after the new government came to power.

During his visit, China promised assistance irrespective of the development path chosen by Myanmar in accordance with its national conditions. However, China expressed concerns over safeguarding border areas stability and highlighted the importance of sustaining a stable environment. President Thein Sein assured that Myanmar's policy toward China would remain unchanged. During Thein Sein's visit to China in May 2011, the relationship was upgraded to comprehensive strategic cooperative partnership. It was declared to be the closest and most important diplomatic relationship (Ministry of Foreign Affairs, the PRC 2011). At the 66th session of the General Assembly in September 2011, China extended support to Myanmar's ongoing political reconciliation and opposed interference in its internal affairs. Against this backdrop, the Chinese side called for maintaining high-level contacts, ensuring the completion of major projects and enhancing coordination in international and regional affairs to strengthen the bilateral strategic partnership. In response, Myanmar expressed its desire to step-up communication and exchanges with neighboring countries as well as international community. Soon after the relationship was upgraded, Beijing's concerns became a reality with the sudden suspension of the US $3.6 billion-worth Myitsone Dam project on September 2011. It shook the foundation of the relationship built during the military junta period in Myanmar. To improve the relationship, Myanmar's Foreign Minister has visited China as special envoy of the President over the dam suspension.

There were external forces and also internal political dynamics influencing the foreign policy priorities of Myanmar. However, Myanmar still may have to pay $800 million with interest to the state-owned China Power Investment Corporation, the amount it claims to have already spent on the dam. The NLD government is now grappling with whether to forfeit that amount or yield to new Chinese pressure to restart the project (Lintner 2019). During State Councilor Dai Bingguoís visit to Myanmar in 2014 to attend the 4th summit of the Greater Mekong Sub-regional cooperation (GMS), both Myanmar and China discussed bilateral relations, sub-regional cooperation, global and regional issues including border stability, implementation of major projects and the economic and trade cooperation by exploiting the complementary advantages. And Myanmar Parliamentary Speaker, Shwe Mann visited China in 2012. China reiterated respect for Myanmar's sovereignty and territorial integrity, and encouraged it to settle the problems and maintain stability along the border areas. Chinese concern over recent developments was termed as complicated changes in the global situation which have brought opportunities and challenges for both countries. Chinese side called for enhancing mutual trust, supporting each other's core interests, expanding cooperation, coordination on regional and international affairs. Meanwhile, President Xi Jinping told the Union Solidarity and Development Party delegation that China has always handled its relations with Myanmar from a strategic perspective. Aung San Suu Kyi endorsed China-Myanmar friendship in her speech at the World Economic Forum on East Asia and Beijing took opportunity to enhance understanding with the NLD party. Moreover, Yang Jiechi met with Myanmar counterpart on the sidelines of the ASEAN foreign ministers meeting and expressed desire to maintain high-level contacts, enhance strategic communication and cement the foundation of the bilateral relations. For the relations to withstand the test of vicissitudes of international situations, the Chinese side asked for maintaining high-level visits and exchange views on major issues of common concern to lay down an action plan for enhancing the strategic partnership. After the Myitsone Dam controversy, for the first time, Myanmar President visited China to attend the 9th China-ASEAN Expo in Nanning, capital of south China's Guangxi Zhuang Autonomous Region. At this time, President U Thein Sein called for fostering bilateral ties in a move to win confidence of the Chinese investors and restore ties with Beijing. In 2013, U Thein Sein gave an interview welcoming Chinese investment, especially those that can create jobs in Myanmar and announced that Chinese investments in Myanmar are mutually beneficial for both the countries. In the press communiqué issued on April 2013, China reiterated its respect for the independence, sovereignty and territorial integrity of Myanmar and its support for government's efforts to maintain national unity and ethnic harmony. The two sides also vowed to strengthen coordination and cooperation in ASEAN+1, ASEAN+3, the East Asia Summit, GMS and the UN and to safeguard common interests of developing countries. China realized the need for steering the ties in the right direction on the basis of mutual respect, equality and mutual benefit, deepen strategic mutual trust and safeguard shared interests.

Beijing is hard-pressed to safeguard its interests from being swayed by the vicissitudes in international politics and external forces (Kubo 2016). Myanmar has opened up in all directions and the reform policy creates a fair competition where the Chinese companies once enjoyed unprecedented advantages due to sanctions and isolation policy (Singh 2014). At the Strengthening Connectivity Partnership, Chinese President committed to US $40 billion fund for infrastructure development among the Silk Road Economic Belt nations which involve revival of the ancient Silk Road between China and Europe via Afghanistan and Central Asia, besides linking BCIM Corridor as well as China-Pakistan Economic Corridor (Gurudas and Thomas 2018). China envisages an economic corridor linking its south-western Yunnan province through Myanmar to Kolkata as a key segment of a land-based 'Silk Road economic belt', and is also planning to boost ties with port cities, such as Chennai, through a 'Maritime Silk Road' starting out from south-eastern Fujian province through South China Sea to Indian Ocean and the Persian Gulf. Regarding the proposed 21st century Maritime Silk Road, Myanmar considered that the route can play an important role in the development of the country by bringing new economic opportunities for Myanmar and its people. Accordingly, Myanmar is now regarded as a newly emerging destination for businesses on account of its strategic geographical location. Located on the southern tip of Indochina peninsula, possesses an important strategic location on the blinks of Indian Ocean and Bay of Bengal, the significant gateway for China to Indo-Pacific regional order and becoming as a commercial corridor for both giant neighbors. It is on the cross road of China's Go West Policy on the one hand and India's Look East Policy on the other. Similarly, Myanmar is important for China's landlocked southwestern provinces market access to Bangladesh and India through transit trade instead of China's eastern coast (Chaw Sein, 2015). China-Myanmar cooperation has a sound foundation.

Therefore, it may achieve early harvest results in the building of BRI (Chenyang and Shaojun 2019). Myanmar's government signed two memorandums of understanding (MOUs) and an agreement letter with China at a Beijing's Belt and Road Forum, detailing strengthened cooperation between the countries on the China-Myanmar Economic Corridor (CMEC), trade and technology. The estimated 1,700-kilometer-long corridor will connect Kunming, the capital of China's Yunnan province, to Myanmar's major economic checkpoints-first to Mandalay in central Myanmar, and then east to Yangon and west to the Kyaukphyu Special Economic Zone (SEZ). Unless China's diplomacy toward Myanmar changed and the Burma Communist Party (BCP) broke up, the power ownership and structure might not have been the same as it is at present. Arms transfer and economic ties have dramatically increased China's influence on and within Myanmar (Marvin 1998). Myanmar was always dependent on China for political protection in the UN during the years of military government when China and Russia protected them in the Security Council against international sanctions, and today they're still protecting Myanmar's civilian government against international sanctions.

ROHINGYA ISSUE AND INTERNATIONAL RESPONSE

The Rohingya, who numbered around one million in Myanmar at the start of 2017, are one of the many ethnic minorities in the country. Rohingya Muslims represent the largest percentage of Muslims in Myanmar, with the majority living in Rakhine state as geographically represented in Figure 1. They have their own language and culture and say they are descendants of Arab traders and other groups who have been in the region for generations. But the government of Myanmar, a predominantly Buddhist country, denies the Rohingya citizenship and even excluded them from the 2014 census, refusing to recognize them as a people. It sees them as illegal immigrants from Bangladesh.

Since late August 2017, more than 671,000 Rohingya Muslims have fled the Rakhine state to escape the military's large-scale campaign of ethnic cleansing. The atrocities committed by Myanmar's security forces, including mass killings, sexual violence, and widespread arson, amount to crimes against humanity. Military and civilian officials have repeatedly denied that security forces committed abuses during the operations, claims which are contradicted by extensive evidence and witness accounts.

The Rohingya, a highly persecuted Muslim group numbering over one million, face discrimination both from their neighbors and their nation, and are not considered citizens by Myanmar's government. Buddhist nationalist groups, including the MaBaTha and the anti-Muslim 969 Movement, regularly call for boycotts of Muslim shops, the expulsion of Muslims from Myanmar, and attacks on Muslim communities. After two waves of violence, reprisals, and riots in June and October of 2012 intensified the century-old conflict in the predominantly Buddhist country, more than one hundred thousand Muslim Rohingyas were internally displaced and hundreds killed.

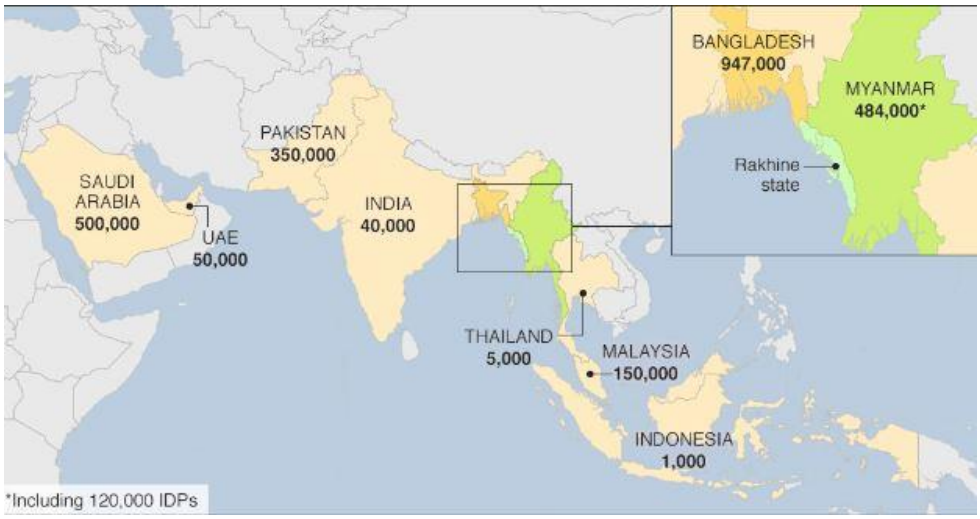

Figure 1: Spread of Rohingya Inside and Outside Myanmar (Source: The Arakan Project/BBC 2017)

There is little indication that addressing the Rohingya issue will become a priority any time soon for Myanmar's government, which has focused instead on establishing a new relationship with the military and addressing multiple ongoing insurgencies. The military signed a cease-fire with several armed ethnic groups in October 2015, but some major groups—including two of the largest militias, the United Wa State Army and the Kachin Independence Army—continue to fight the government. While the cease-fire agreement was a potential step towards peace in Myanmar, it failed to finalize a framework for a new balance of power between the central government and local authorities in the restive borderlands or require ethnic groups to disarm.

Tensions between Buddhist and Muslim communities in Myanmar's Rakhine state have escalated dramatically since late August 2017. A series of attacks by a group of Rohingya militants calling itself the Arakan Rohingya Salvation Army (ARSA) on military and police outposts killed more than seventy people, including twelve Burmese security forces personnel. In response, the military launched a brutal crackdown on Rohingya villages, causing over seven hundred thousand people to flee across the border to Bangladesh since August 2017. Widespread reports indicate indiscriminate killings and burning of Rohingya villages, escalating to the point that the UN Human Rights Commissioner called the situation in Rakhine state "A textbook example of ethnic cleansing" (Guardian, 2017). The violence has led to a growing humanitarian crisis in neighboring Bangladesh, where nearly one million Rohingya now reside in refugee camps along the border. In this situation, friendly relations between the US-Myanmar have gradually changed. Due to disagreements over human rights issues, the two countries have remained a divisive factor. However, Myanmar's stability is increasingly important to U.S. interests given Myanmar's strategic importance in Southeast Asia, vast natural resources, and emerging democratic government.

These are now the only real possibilities on offer for the Rohingya, a community that is, by and large, on its own, with dwindling numbers of supporters on the international stage, and grandiose talk of worldwide relief and international law and justice accompanied by little to no action. The 1982 citizenship law excluded the Rohingya from a list of 135 officially recognized ethnic groups. The governments officials today refuse even to acknowledge the term 'Rohingya' insisting that they are illegal immigrants from neighboring Bangladesh and have no history in the country. This denial of citizenship has enabled numerous human rights abuses and impedes international efforts to assist the growing number of Rohingya who are fleeing to neighboring countries to escape persecution (Raymond, 2015). Wave after wave of extreme violence against them culminated in August 2017 with a crackdown that forcibly displaced nearly a million people. At least 9,000 members of their community died in just the first month of the onslaught, according to Médecins Sans Frontières, an NGO that has produced the most authoritative estimate of fatalities to date.

FACTORS AFFECTING CHAINA-MYANMAR FOREIGN RELATIONS

Britain ruled Myanmar for more than a century. That is why Myanmar has strived for a nonaligned foreign policy for decades, probably to avoid a return to colonialism. Basically, considering the various circumstances, it is clear that the Myanmar's government has no confidence in China. Myanmar business people sometimes feel condescension from Chinese partners, while Yangon hopes to avoid any sovereign debt. The Chinese-funded $3.6 billion Myitsone Dam project (Zhou 2019) and China's stake in a seaport have worried the government about owing a debt. But Myanmar now wants any foreign investment to benefit the country, not just the investor. It vets projects at international standards.

In 2019, Aung San Suu Kyi and the Chinese foreign minister discussed to promote bilateral cooperation under China's Belt and Road Initiative. The $1 trillion initiative extends Chinese-funded infrastructure around Asia with the aim of building new trade routes. Considered from a strategic and security standpoint, Myanmar's appreciation for China's importance as a great neighbor with unequal power and influence in Asia and the immediate local environment has always been a source of national political concern. Earlier China's entry into China and BCP support brought this reality back to modern times. The fact that the major ethnic armed groups representing the Wa, Kokang, Kachin and Shan have Chinese roots and have strong political and economic ties to China makes the situation even more important. As a result, from a political and strategic point of view, Chinese cooperation is essential for Myanmar to achieve domestic political cohesion and security. China has repeatedly experienced this situation by reminding Myanmar that border security and security are closely tied to how Myanmar addresses conflicts near the border. The simple reason for this development is the fact that violence in border areas always results in floods of refugees across borders in Yunnan, China. This development is not surprising as it is the safest exit abroad.

Ethnic insurgency in Myanmar has always involved neighboring countries and traditionally China and Thailand were the most involved in these activities. In the case of Thailand, the previous Thai governments' policy of supporting the Karen National Union (KNU) and the Shan State Army-South (SSA-S) as part of a broader buffer policy against Myanmar strained bilateral relations between the two countries (Chachavalpongpun 2005, 58-9). In the case of China, the situation is much more complicated and spans a broader spectrum of groups. The first two of these are the Wa and the Kokang – ethnic Chinese who formed the sword arms of the Burmese Communist Party (BCP). The two groups are represented by the United Wa State Army (UWSA) and the Myanmar National Democratic Alliance Army (MNDAA) respectively. China has always maintained that it neither supports nor harbors ethnic insurgents from Myanmar and has in the past even pressured smaller groups like the MNDAA to sign ceasefire agreements. It has also sent government officials to observe negotiations between the Myanmar government's Union Peace Making Work

Committee (UPWC) and the KIA (Ganesan 2014, 131-32). Analyzing the factors influencing mutual relations between China and Myanmar diplomatic relations can be summarized as follows. First, governance traps. Myanmar's industrial processes were heavily influenced by policies, and the government's management experience and efficiency were essential for industrial development. For a long time, Myanmar's economic lifeblood was in the hands of the military that had no economic management training and lacked economic expertise and management skills, which had affected the country's economic development to some extent. Myanmar is currently Yamasuhi's ruling ZANU-PF, the NLD has long been in opposition, there was no practice of managing the country, not a long time in power, lack of experience in market mechanisms and macroeconomic regulation, coupled with Myanmar's domestic military forces are still deep-rooted, forming a constraint. The ability of the new Government to govern has become an uncertain factor affecting Myanmar's economic and industrial development.

Second, the situation in the country is volatile. Myanmar's civil war has long affected economic and social development, and the situation in the country has eased in recent years, with a year-long peace in the country in 2015, when the Government of Myanmar and eight ethnic local armed groups signed a nationwide ceasefire agreement. In November 2016, however, four local forces in Myanmar launched another offensive against government forces in the worst fighting since Aung San Suu Kyi came to power. In 2017, unrest among the Rohingya in Myanmar's western Rakhine state pushed the Burmese government to the forefront of the international community. The internal armed conflict has always been a serious challenge for Myanmar, and the volatile situation has cast a shadow over China-Myanmar geo-cooperation.

The third, Myanmar's current economic and social development is backward, and the basis of China-Myanmar geo-cooperation is poor. Myanmar's per capita GNI in purchasing power terms was $4,930 in 2015, well below the world average of $15,529, and only higher among Southeast Asian countries than Cambodia and Timor-Leste. Myanmar's 26 per cent of the population is currently below the poverty line, with low incomes and low purchasing power leading to insufficient domestic demand to drive manufacturing growth. Myanmar's inflation rate has been high for a long time, at 9.5 per cent in 2016, compared with 2 per cent for ASEAN as a whole (Plecher 2019), and rising inflation has exacerbated poverty, increased the cost of business and is not conducive to the development of the real economy. In addition, Myanmar's infrastructure is underdeveloped.

The fourth, education is backward and talents are scarce. The issue of educational development and talent development is the focus and difficulty of successive Governments in Myanmar. Myanmar's backward educational development and the long-term low quality of its national population seriously restrict the potential of Myanmar's national development. Myanmar has a tradition of student participation in political movements, and university students, an important force in promoting democracy in Myanmar, have been repeatedly

crushed by the military regime since the military government came to power in 1988, and Myanmar's universities have often been closed. Myanmar's transformation and development is severely constrained by the low level of education, overpopulation of agricultural populations, lack of economic management and lack of vocational skills.

MYANMAR'S FOREIGN STRATEGIC APPROACH TOWARD CHINA

From Myanmar's independence to the present, Myanmar's analysis of the flow of foreign policy shows that the most striking point is that the basis of the Neutral and Non-Aligned is the only thing common to foreign policy. Myanmar held that political position because of the politician's thoughts of spontaneous healing of the colonial pains and no longer recurring the dark history of the past. At the same time, it can be said that there is an intention not to be a victim of the international order that has been transformed into a bipolar system of US and Soviet power. Since independence, however, the geopolitical values of Myanmar have been recognized in the western world, including neighboring countries and even in the United States and Europe, confirming the fact that there have been various attempts to put Myanmar under its own influence. After the voluntary isolation and closure of the Ne Win regime, the new military regime had implemented a biased policy of pro-China to maintain the regime. As a result, Myanmar's geopolitical value was temporarily lost. However, in 50 years, Myanmar's value has revived as the military regime ends and the regime enters into a softening stage, with the unexpected reform and open market policy. Recently, however, the diplomatic strategy against China, which defends its policies, is changing due to Rohingya issue. Following Rohingya's changes in Myanmar's approach to China's foreign policy, the following can be diagnosed.

When NLD leader Aung San Suu Kyi decided to join the new parliament in 2012, Beijing had to coordinate Myanmar's approach to the new government. Beijing could no longer place bilateral relations strictly on inter-party relations between the large Union Solidarity and Development Party (USDP) and the Chinese Communist Party. China has increasingly hosted visits by members of various political parties, and Chinese organizations have formed various new bilateral relations with growing civil society in Myanmar. Realizing that China is suffering from a serious lack of analytical knowledge about Myanmar and its political diversity, Beijing has encouraged various Myanmar's universities and policy research institutions to develop new research programs for Myanmar. As a result, China's policy community has become subtler and more sophisticated with respect to changing relations with the new Myanmar, especially as it has been found that the military no longer controls the country's economic and political life, as in the SPDC. Gradually began to grasp his attitude. Myanmar is linked to China by mountains and sea, and 'Pauk-Phaw' runs deep. In recent years, cooperation between Myanmar and China is improving in scale, scope and level, with broad prospects for cooperation.

According to the data by the Ministry of Commerce of China, the bilateral trade volume between Myanmar and China in 2018 reached US $15.24 billion, a year-on-year increase of 13.1 percent. China is now Myanmar's largest trading country and the largest source of investment (The Myanmar Times 2019). Through the friendly and diverse cooperation between the two countries, Myanmar explores new strategic diplomatic relations with China as a strategy to make up for the criticism of the international community.

China's BRI is a strategic plan of historical and practical importance, offering a new platform for regional cooperation and new opportunities for mutual development. Myanmar is the largest mainland in ASEAN, a representative of developing countries, and a key partner in BRI construction. It is helpful to have a clear understanding of Myanmar's understanding of BRI. Myanmar's high-level political leaders have responded positively to the implementation of BRI, as China and Myanmar have a bright future to jointly promote BRI. With the cooperation issued in November 2014, Myanmar welcomes BRI, but both sides agree to inherit the spirit of the Silk Road. Strengthen cooperation in marine economy, connectivity, environmental protection and cultural exchange. Promote mutual benefits and joint development with countries along the route. However, Myanmar's society knows little about BRI; awareness is limited to officials and elites doing policy research about China. Even some officials of the U Thein Sein government do not know what kind of cooperation can be carried out between China and Myanmar. They suggest that China strengthen publicity of BRI and said that they can arrange for translation and publication if China can provide proper materials (Chenyang and Shaojun 2018).

The Myanmar government regards the Rohingya as illegal immigrants who entered after the country gained independence from Britain in 1948 and after the Bangladesh liberation war in 1971, when more people fled to Myanmar to avoid violence. As Washington begins to pursue sanctions against Myanmar's Army for what American and United Nations officials call a campaign of ethnic cleansing against the Rohingya Muslim minority, China is taking advantage and filling the gap. Already spending billions of dollars on infrastructure projects in Myanmar, China is now also assisting its neighbor in diplomatic efforts to try and help burnish the country's image in the face of widespread criticism. Though China has usually been reluctant to become involved in mediation, it has offered to broker talks between Myanmar and Bangladesh, now the host of more than 600,000 Rohingya who fled the military campaign of systematic rape, massacre and arson in Myanmar. As China moves more aggressively to build a sphere of influence in Southeast Asia, Myanmar is a prime asset, a border state with a long coastline that offers a strategic outlet to the Indian Ocean (Perlez 2017). There is no territorial dispute with China in Myanmar. It seeks to benefit from China's infrastructure and energy projects, including Chau Phou Exclusive Economic Zone, oil and gas pipelines because Chinese investments do not carry any preconditions about human rights or democratic principles. This is even more important for the Myanmar government in the context of Rakhine state security and the Rohingya refugee crisis.

China has actively supported Naypyidaw's stance on this particular issue. China has often prevented the UN from submitting a resolution to Myanmar addressing records of human rights abuses in Myanmar. Myanmar will continue to maintain the Pauk-Phaw (fraternal) relationship with China (Constantinou; Kerr and Sharp 2016) even as the US-China competition heats up. This actually serves Myanmar's long-held foreign policy, which calls for balancing internal factors while managing external relations independently. Naypyidaw will remain a hot spot for competition between China and the United States. On a recent past basis, the Myanmar government seeks to enjoy its own interests while maintaining a delicate balance in external relations.

OUTLOOK AND IMPLICATIONS

Outlook

Myanmar wants to engage China without giving it outsized leverage. It also hopes the fleeing Rohingya do not create a refugee crisis in Indonesia or Malaysia, both predominantly Muslim members of the bloc. The following are some of the issues that have been analyzed as future prospects.

First, The China-Myanmar Economic Corridor (referred to as the China-Myanmar Economic Corridor) as the Belt and Road initiative (BRI) is the core component of the China-Indochina Peninsula Economic Corridor and the Bangladesh-China-India-Myanmar Economic Corridor in the six Belt and Road corridors. Among them, the China-Indochina Peninsula Economic Corridor starts from Nanning, Guangxi, China, and Kunming, Yunnan, and ends with Singapore. Myanmar, Vietnam, Laos, Cambodia, Thailand, Malaysia and other countries that run through the Indochina Peninsula are onshore silk roads and sea. The connection area of the Silk Road is a land bridge connecting the Pacific Ocean and the Indian Ocean. Since the launch of the 'Belt and Road initiative (BRI)', China-Myanmar Economic Corridor has achieved remarkable results in terms of connectivity, economic and trade cooperation, political mutual trust, financial cooperation and cultural exchanges. With the gradual deepening of China-Myanmar political mutual trust, China-Myanmar geopolitical cooperation under the Belt and Road Initiative has great potential. Aung San Suu Kyi, state adviser directly headed the business committee to spearhead the BRI related business in China. In 2018, when Aung San Suu Kyi met President Xi Jinping in China, she received a loan of 10 billion yuan (about USD 14.36 billion) from China. Therefore, it is highly likely that the Myitsone Dam construction project, which has been suspended and is not being promoted, will be re-promoted in the future. Since 2011, Myanmar has received significant capital from Singapore, South Korea and Vietnam. On the other hand, the size of China's investment has decreased significantly year by year. China's investment in Greater Myanmar reached $4.3 billion in 2011-2012, falling to $56 million in 2013-2014 and $51 million in 2014-2015.

However, the atmosphere of these investments has recently changed, as shown in Table 1. At $400 million in 2016-2017, it has re-emerged as one of the three largest investing countries after Singapore and Vietnam, and its investment size has recovered to $1.3 billion in 2017-2018.Myanmar lawmakers warned of high and rising debt to China and urged the National League for Democracy (NLD)-led government to repay the loan as soon as possible to avoid a sovereign erosion debt trap. With foreign exchange reserves at a meager US $6.35 billion in 2018 and the national debt estimated at US $10 billion, of which $4 billion is now owed to China. The interest rate on most Chinese loans is a whopping 4.5%, believed to be the highest rate among all the foreign government and financial institutions that Myanmar now owes. Most of Myanmar's foreign debt was accumulated between 1988 and 2011, a period when the country was subjected to Western sanctions imposed against the previous military regime's poor rights record (Lintner 2019). At that time, China was the only major foreign donor to lend generously to an exiled government. Myanmar's international isolation for over 20 years left it heavily indebted to Chinese monetary institutions. Through the Belt and Road Initiative project that China is ambitiously promoting, including a high-speed railroad connecting China's landlocked southern region to a deep-sea port at Kyaukphyu that opens on to the Indian Ocean, that debt load eventually aimed ultimately to facilitate China's grand strategic designs for Myanmar.

Second, Myanmar's huge resources and market potential are favorable factors for its leapfrog development. Myanmar is rich in natural resources such as rice, wood, and fisheries, and rich in natural gas and hydropower resources. Especially, natural gas is the most important source of foreign exchange for export in Myanmar. Myanmar has proven natural gas reserves of 10 trillion cubic feet, and produced 692 billion cubic feet in 2015. It is exported to Thailand and China except for its own use. As an early industrialized country, Myanmar has abundant labor resources, and its demographic dividend has provided strong support for its industrialization development. Myanmar's population reached 53.4 million in 2018, ranking 26th in the world and 5th in Southeast Asia. At present, more than half of the labor force in Myanmar is engaged in agricultural production, 30% of the rural population has no arable land and no source of income, and the potential of labor is huge. A large number of cheap labor is the advantage of developing labor-intensive industries.

Table 1. Foreign Investment in Myanmar by Country (Source: compiled by author based on DICA data)

COUNTRY	2011-12	2012-13	2013-14	2016-17	2017-18	2018-19
Australia	-	-	17.896	19.290	-	-
Austria	-	-	-	-	-	-
Bangladesh		-	-	1.077	1.500	-
Brunei	-	-	2.273	18.026	8.074	10.234
Canada	-	2.102	-	5.150	1.360	-
China	**4345.728**	**231.773**	**56.160**	**481.591**	**1395.219**	**634.577**
France	-	-	5360	790	7.340	490
Germany	-	-	-	1.153	10.398	-
Hong Kong	-	84.839	104.004	213.700	251.982	456.372
India	7.300	11.500	26.040	-	10.993	5.000
Indonesia	-	-	-	9.034	9.859	-
Japan	4.318	54.063	55.711	60.423	384.119	42.777
Macau	-	-	-	-	3.640	
Malaysia	51.864	4.324	616.108	21390	21.877	1.779
ROK	25.572	37.942	81.205	66.423	253.904	89.383
Singapore	-	418.233	2300.121	3820..764	2163.963	2409.567
Sri Lanka	-	-	-	-	1.250	
Switzerland	-	-	-	-	-	16.838

The third, the commerce environment has gradually improved. In recent years, with Myanmar's democratization reform, its business environment has become increasingly open. Myanmar's Foreign Investment Law was promulgated in 1988. In May 1989, the Myanmar Foreign Investment Commission announced economic projects that foreign investors can invest in the variety of areas including food, textiles, daily necessities, household goods, leather products and imitation products, transportation vehicles and materials, and construction materials etc. (Tao 2016). After the new government of Myanmar came to power in 2011, it vigorously launched reforms in the economic field, actively introduced foreign capital, and strengthened industrial development. In response to the influx of Western investment, the Myanmar Parliament passed a new Foreign Investment Law in November 2012, replacing the 1988 Foreign Investment Law. The new law allows foreign investment in power, oil and gas, mining, manufacturing, restaurants and tourism, real estate, transportation, telecommunications, construction and other service industries; the Myanmar-foreign joint ventures have abolished the requirement that foreign investment must account for at least 35%. The abolition of the requirement that the proportion of foreign investment in Myanmar-foreign joint ventures not exceed 50% in some restricted areas for 8 years of tax exemption for foreign investors. The Myanmar government announced a five-year national export strategy plan in 2015 to promote exports of rice, beans, aquatic products, rubber, wood and forest products, textiles and clothing, and develop tourism.

Myanmar is more likely to accept China's participation in the economic corridor, a construction project that links China through Rakhine. The corridor has begun building a $7.3 billion deep-sea port next year at Kyaukpyu, the port city of the Indian Ocean Rakain, by one of China's major construction companies. Pipelines from the port are planned to transport gas and oil via Rakhine to southern China. Kyaukpyu is of considerable strategic and economic value for China as it seeks to speed development of Yunnan and its other inland provinces. That value is centered on the development of a deep-water port and the construction of accompanying road and rail links to supplement the pipelines already running to Kunming. Whether the project also boosts Myanmar's economic growth will depend on the success of the accompanying SEZ, and the terms under which it takes shape (Poling, 2018).

The fourth, China and India will dominate Myanmar's foreign policy stage, and their dealings with the rest of ASEAN will grow during 2018. Sandwiched between two active Asian giants, Nay Pyi Taw will have to balance its relations carefully as India and China vie with each other for greater influence. Most importantly, Myanmar must avoid being sucked into conflict zones in their common areas of influence and know how to duck whenever these two confront one another. In the future, the crisis in Rakhine state will remain a key area where Beijing and New Delhi will continue to compete, displaying goodwill to help their troubled neighbor. Furthermore, they will try to mitigate any repercussions from the growing international condemnation of its handling of the crisis and the myriads of problems caused by the massive exodus to Bangladesh, which is now estimated to number 750,000 people. The international community will continue to step up pressure on Myanmar to accelerate efforts to repatriate more displaced people. But the real problems on the ground still need to be overcome.

The fifth, China will have a special role to play in Myanmar. China's new foreign policy under President Xi Jinping will increase engagement with Nay Pyi Taw in all areas. Since the end of the 19th National Congress of the Communist Party of China, Beijing has been actively facilitating peace talks and providing humanitarian assistance. The Rohingya crisis presents an excellent opportunity for China to test its diplomacy as never before. Myanmar's relationship with China involves historical and geographical linkages that cannot simply be wished away. Additionally, Myanmar will require Chinese assistance in dealing with important state security objectives like ending ethnic insurgency and human and drug trafficking. China also will have strong economic investments and linkages in Myanmar that need to be considered from a practical point of view. While the present situation in Rakhine state has cast Myanmar, the country's military and Aung San Suu Kyi in a negative light, it will provide China with a window of opportunity to strengthen the bilateral relationship (Ganesan 2018).

Following the inauguration of the new government in Myanmar, diplomatic relations in response to the reform and opening up and recent Rohingya issues have led to the establishment of a diplomatic strategy as a way to avoid criticism of the international

community, decrease investment, and the resulting isolation of the international community. In that regard, Myanmar's future diplomatic relations with China have forced to change. But, traditional Myanmar's foreign policy is very likely to maintain its tone, as it is realism, that is, a non-aligned neutral path if there are no geopolitical changes, such as the disappearance of nearby powers. The current democratic government has abandoned the international community's voluntary process of self-reliance in order to maintain its government during the military government, and to maintain economic and diplomatic relations with neighboring countries at a certain level. It should be noted that on the security side, it will seek to take the initiative to structure the order around what can benefit the country.

Implications

Myanmar is located at the crossroads of South and Southeast Asia. It is connected to India and China at its northwest and northeastern borders respectively. Additionally, its reserves of energy resources, emerging consumer class, youthful population, and its access to the Bay of Bengal and Indian Ocean make it an important stakeholder in the Asia-Pacific (and Indo-Pacific) region. Myanmar has figured in the foreign policy discussions of most of its neighbors, including China, India, and the countries of the Association of Southeast Asian Nations (ASEAN) (Kundu 2018). Myanmar's internal conflict spurred a new approach with China, which was caused by U.S. sanctions and the resulting Myanmar government's search for a breakthrough.

First of all, the Government of Myanmar will have the opportunity to reform its image from economic interests and the international community by pursuing diplomatic cooperation with China. However, it can have a significant impact on the US-led Asia-Pacific strategy. This is because it could have a long-term strategic impact on India, Myanmar's neighboring country. By agreeing to build CMEC as part of China's BRI project, China could expand the CMEC by including Bangladesh. Myanmar may seek new cooperation as part of its BRI initiative with neighboring Bangladesh. In this case, the development situation in India, which hinders their role in the surrounding area, can be problematic. As strategic projects grow in Qiac, the broader Bengal Bay area will become more interested in Beijing's calculations as China's propensity for securing these projects grows and expands. Therefore, it is important for the United States to present Myanmar with a balanced leverage against china's move, along with its allies and partners in the Indo-Pacific strategy. For example, Japan now plays a key role in Myanmar's strategic infrastructure projects. India and Japan have agreed to jointly develop connectivity projects in the region, including Myanmar. This need for strategic cooperation can have a greater effect when Myanmar's fortunes are limited and difficult, as tensions with Myanmar and the West are intensifying. The US-China interaction is likely to remain a problem for Myanmar, as it is possible that the international community in Myanmar will not be able to resolve its image on racial issues in the near

future, and Myanmar is likely to attempt to change its strategic approach in the future, taking into account national interests in both the United States and China. As Western countries move away from Myanmar due to the Rohingya issue, they will increasingly try to emphasize the importance of Naypyidaw's diplomatic balance. The priority decision of the national peace process for the economic development of the Aung San Suu Kyi government may be argued that it could be a strategic mistake because Myanmar has made it dependent on China when dealing with ethnic militant groups on the China-Myanmar border. In fact, this strategy minimizes the government's ability to use international goodwill for the necessary economic development. Naypyidaw's reliance on China to deal with ethnic issues is drawing China into designing China's strategic design as Western countries take an increasingly difficult stance on Myanmar's internal conflicts. But to be fair to the Aung San Suu Kyi government, the priority of national peace has its advantages in that it provides an opportunity to find solutions to the country's ethnic problems. The Government of Myanmar underestimated the complexity of the problem, but the aim was to find a solution to the problem decades ago in the new era of democratization.

China's active participation in ethnic conflicts in Myanmar for six years has not been successful in minimizing militarized conflicts between Myanmar's military and ethnic minorities along the Myanmar border or promoting Myanmar's peace process. In fact, there are concerns that a new military conflict may unfold in recent years, with new political or military alliances such as the Northern Alliance or the UWSA-led FPNCC, as well as new clashes between ethnic militants and Myanmar troops, creating a new level of ethnic conflict.
Actually Myanmar shares delicate relationships with both China and the United States and has been benefitting from this position for decades. Myanmar's relations with China have primarily been based on asymmetric power equations, which are proving to be beneficial for Myanmar (Kundu 2018).Under these circumstances, the United States needs to make efforts to improve diplomatic relations with Myanmar from a realistic standpoint in order to smoothly pursue the Indo-Pacific strategy and to deal with China's aggressive diplomatic strategy toward Myanmar. The US will require strategies quite unlike those that are familiar from the past. Above all else, Washington will need patience, subtlety, strategic flexibility, and the ability to hold the competing instruments of engagement, hedging, and balancing in a reflexive equilibrium that is capable of adapting rapidly, while at the same time rebuilding the domestic capacities required to sustain America's current preeminence in the Indo-Pacific region and actually increase its margins of advantage to the extent possible.

CONCLUSION

This paper examines the new foreign strategic relationship between Myanmar and China since Rohingya crisis. In particular it has investigated how Myanmar's foreign strategy toward China was changing as the crucial first stage of negotiations.

The in-depth analysis of Myanmar's foreign policy since the Rohingya issue gives a new level of insight into how Myanmar's foreign strategy dealt with the international response and relations with China. The Rohingya issue have caused the West to re-impose limited sanctions and allowed China to reaffirm its financial leverage over the country. When the international community recognized the suppression against Rohingya Muslims as 'ethnic cleansing' and held the UN Security Council, China was the only country to support the Myanmar government who suppressed Rohingya. Since then, the Chinese government has publicly supported Myanmar's military operations.

Also the results regarding the future prospects show five facts through an analysis. Actually from a Chinese perspective for Geo-environment, Myanmar is an important country along China's ongoing 'Belt and Road Initiative'. The China-Myanmar Economic Corridor is the core of the six main economic corridors of the BRI. At the same time, Myanmar is also in a complex geographically fragmented zone. For many years, Myanmar has been deeply affected by multiple forces such as great power struggles and local armed divisions. In the context of the 'Belt and Road Initiative', China-Myanmar geo-cooperation has broad potential. Taking the common interests of China and Myanmar as the starting point and the China-Myanmar economic corridor as the axis, China and Myanmar can focus on priority cooperation areas such as infrastructure, industrial development, economic and trade cooperation. China-Myanmar cooperation under the Belt and Road Initiative has great potential. It is highly likely that the construction projects including Myitsone Dam related to the BRI will be re-promoted in the future. In addition, China and Myanmar are putting much effort into security cooperation in geopolitical terms.

Subsequently, we found out that Myanmar's future reform and development need China's support, while China needs Myanmar's cooperation for maintaining the stability of the Southwest border area. Myanmar is regarded as 'the last virgin land in Asia'. The future of China–Myanmar cooperation is bright, which will also promote Myanmar's development. China and Myanmar have solid mutual political trust and strong economic complementarities, which determine that China will play a very important and irreplaceable role in Myanmar's future transition. Myanmar is now emerging as a new country that will temporarily become a powerhouse of great powers.

Taking advantage of this ambience, Myanmar will continue its efforts to build active diplomatic cooperation with China, as part of overcoming difficult situations at home and abroad. In the future, China will have a special role to play in Myanmar. China's new foreign policy under President Xi Jinping will increase engagement with Myanmar in all areas.

Myanmar's relationship with China involves historical and geographical linkages that cannot simply be wished away. Myanmar also will require Chinese assistance in dealing with important state security objectives. Like saying 'Misery loves company', both Myanmar and China are looking for a change in their diplomatic strategy. 

REFERENCES

1. "China-ASEAN Expo contributes to new Myanmar-China cooperation."2019. *The Myanmar Times*. September 17. Accessed May 23, 2019. https://www.mmtimes.com/news/china-asean-expo-contributes-new-myanmar-china-cooperation.html
2. "China's Relations with Burma". 2015. *United States Institute of Peace*. Accessed May 13, 2019. https://www.usip.org/publications/2015/05/chinas-relations-burma
3. Clapp, P.A., 2015. "China's Relations with Burma". Testimony before the US-China Economic and Security Review Commission; 13.
4. Constantinou, M. Costas. Kerr, Pauline. Sharp, Paul. 2016. "The SAGE Handbook of Diplomacy." SAGE: 597.
5. DICA. 2019. "Data and Statistics, Foreign Investment by Country." Accessed July 10. https://www.dica.gov.mm/en/taxonomy/term/38
6. Economic and Commercial Counselor's Office of the Embassy of the People's Republic of China in the Federal Republic of Myanmar. 2012."Myanmar Parliament Passes New Foreign Investment Law." February 25. Accessed May 5, 2019. http://mm.mofcom.gov.cn/article/ddfg/201202/20120207983337.shtml.
7. Gurudas, Das C. Thomas, Joshua. 2018. BCIM Economic Cooperation: Interplay of Geoeconomics and Geo-politics. Abingdon: Taylor & Francis: 218.
8. Ganesan, Narayanan. 2018. "Bilateral Issues in Myanmar's Policy towards China." January, Southeast Asian Studies at the University of Freiburg, Occasional Paper Series:3.
9. Plecher, H. 2019. "ASEAN countries: Inflation rate from 2008 to 2018." *Statista*. December 6. Accessed December 26, 2019. https://www.statista.com/statistics/804325/inflation-rate inthe-asean-countries/
10. Jennings, Ralph. 2019. "Myanmar, Though Suspicious of China, Edges Closer to Beijing for Safety." VOA December 25. Accessed October 25, 2019.https://www.voanews.com/east-asia-pacific/ myanmar-though-suspicious-china-edges-closer-beijing-safety
11. Krishnan, Vidya. 2019. "Nobody Is coming to help us." the Atlantic. Oct 19. Accessed October15, 2019. https://www.theatlantic.com/international/archive/2019/10/rohingya-bangladesh-myanmar-international-law/600169/
12. Kubo, Koji. 2016."Myanmar's Cross-border Trade with China: Beyond Informal Trade, IDE Discussion Paper No. 625."*Institute of Developing Economies, Japan External Trade Organization (IDEJETRO)*.http://www.burmalibrary.org/docs24/2016-12-00-Myanmar-Cross-border-Trade-with-China-Beyond-Informal-Trade-red.pdf.

13. Kundu, Sampa. 2018."How Myanmar Benefits from the US-China Competition in the Indo-Pacific." *The diplomat*. December 8. Accessed November 12, 2019. https://thediplomat.com/2018/12/how-myanmar-benefits-from-the-us-china-competition-in-the-indo-pacific/
14. Li, Chenyang and Song, Shaojun. 2018. "China's OBOR Initiative and Myanmar's Political Economy,"*The Chinese Economy*, 51: 323.
15. Lintner, Bertil. 2019. "Poor and isolated, Myanmar backs into a China debt trap." *Asia Times*. January 31. Accessed July 5, 2019. https://asiatimes.com/2019/01/poor-and-isolated-myanmar-backs-into-a-china-debt-trap/
16. "Myanmar treatment of Rohingya looks like 'textbook ethnic cleansing'."2017. *The guardian*, September 11. Accessed June 23, 2019. https://www.theguardian.com/world/2017/sep/11/un-myanmars-treatment-of-rohingya-textbook-example-of-ethnic-cleansing
17. Poling,Gregory. 2018. "Kyaukpyu: Connecting China to the Indian Ocean. Asian Maritime Transparent Initiative."*CSIS*. April 4. Accessed October 7, 2019.https://amti.csis.org/kyaukpyu-china-indian-ocean/
18. "Myanmar Rohingya: What you need to know about the crisis." 2018. *BBC*.April 24. https://www.genocidewatch.com/single-post/2018/09/23/Myanmar-Rohingya-What-you-need-to-know-about-the-crisis
19. Ministry of Foreign Affairs, the People's Republic of China. 2011. "President Hu Jintao Holds Talks with His Myanmar Counterpart U Thein Sein. https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/gjlb_663354/2747_663498/2749_663502/t826539.shtml
20. Ministry of Foreign Affairs of the People's Republic of China. 2013. "Joint Statement Between China andMyanmar on Deepening Comprehensive Strategic Cooperation."Accessed August 15, 2019. http://www.fmprc.gov.cn/web/ziliao_674904/1179674909/t12113_67.shtml
21. Tourangbam, Monish and Amin, Pawan. 2019. "China's Dynamic Grip on Myanmar." *The diplomat*, May7. Accessed July 25, 2019. https://thediplomat.com/2019/05/chinas-dynamic-grip-on-myanmar/
22. Ott, Marvin C. 1998. "From Isolation to Relevance: Policy Considerations." In Burma: Prospects for a Democratic Future, ed. Robert Rotberg: 71-2.
23. Perlez, Jane. 2017. "In China, Aung San Suu Kyi Finds a Warm Welcome." The New York Times, November 30. Accessed June 22, 2019. https://www.nytimes.com/2017/11/30/world/asia/china-myanmar-aid-sanctions.html
24. Raymond, Russell. 2015. "Myanmar's Muslim Minority: The Plight of the Rohingya". Freedom House. September 8, Accessed September 16, 2019. https://freedomhouse.org/blog/myanmar-s-muslim-minority-plight-rohingya

25. Sein, Daw Chaw Chaw.2015. "Myanmar's Perspective of One Belt, One Road."Internal Document for Silk Road Forum 2015. Accessed July 22, 2019. http://en.drc.gov.cn/DawChawChawSein.pdf
26. Singh, P. R. 2014. "China-Myanmar relations in the twenty-first century."*Himalayan and Central Asian Studies*, 18(1/2): 188-89.
27. Thant, Myint U. 2016."Why Burma must reset its relationship with China."*Foreign Policy*.January 12. Accessed November 7, 2019.http://news.yahoo.com/why-burma-must-reset-relationship-224903808.html.
28. Tao, Song. 2016. "Research on the Development Characteristics and Trends of Chinese Direct Investment in Myanmar."*World Geographic Research* 25(4):40.
29. Zhou, Laura. 2019. "China faces backlash as it bids to rekindle stalled US$3.6 billion Myitsone Dam project". *South China Morning Post*. Jan 20. Accessed May 24, 2019. https://www.scmp.com/news/china/diplomacy/article/2182825/china-faces-backlash-it-bids-rekindle-stalled-us36-billion

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COMPREHENSIVE ANALYSIS OF SOUTH SUDAN CONFLICT: DETERMINANTS AND REPERCUSSIONS

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Abstract: *South Sudan, which separated from Sudan in 2011 after nearly 40 years of civil war, was embroiled in a new devastating conflict at the end of 2013. This happened when political disputes coupled with preexisting ethnic and political fault lines became brutal. This conflict has mostly targeted civilians and most often, ethnic groups, and warring parties have been accused of war crimes and crimes against humanity. The conflict has resulted in a major humanitarian crisis, mass displacement and mass atrocities against South Sudanese citizens. Notwithstanding, instability in South Sudan has made the country one of the most dangerous countries for humanitarian aid workers in the world, especially as majority of them have lost their lives during their operation. In view of this, the article seeks to interrogate the main driving forces that triggered the deadly conflict and also the ramifications brought upon the population as well as the country.*

Keywords: *Comprehensive Analysis; Conflict; South Sudan; Determinants; Repercussions*

INTRODUCTION

South Sudan became independent in 2011 as the youngest nation in the world. It is located in the heart of Africa and borders six countries consisting of Ethiopia, Eritrea, Djibouti, Somalia, Kenya and Uganda. After nearly 40 years of war between the Sudanese government and southern rebels, southern Sudan announced separation from Sudan in a January 2011 referendum. During the civil war, more than 2.5 million people were killed and about 4.5 million were displaced (Blanchard 2016). South Sudan was devastated by the conflict, which impeded the development of basic infrastructure, human capital, and formal civil institutions. South Sudan is very wealthy in oil, but after decades of civil war, it has become one of the least developed regions on the globe. Despite having abundant natural resources, including oil fields, from which Sudan had generated 75% of its oil production before separation, there was still a massive chronic humanitarian need after independence, high-level state corruption likewise slowed down post-war recuperation and improvement. South Sudan was the world's largest beneficiary of humanitarian assistance in the year 2013, a period of relative stability; its needs have since developed considerably (Blanchard 2016).

However, in December 2013, political tensions among major leaders in South Sudan exploded with violence. The political conflict that triggered the crisis was not based on ethnic identity, but overlapped with preexisting ethnic and political complaints, sparking armed conflicts and targeted genocide in the capital, Juba and elsewhere. President Salva Kiir accused his former vice president, Riek Machar, of plotting a coup, but Machar continued to deny the allegation. Reportedly, during the first few days of the conflict, hundreds of civilians were killed in attacks targeting Nuer, Juba's Machar ethnic group. Subsequently, Nuer's revenged attack against Dinka, Kiir's ethnic group, and retaliatory violence spread. Machar, with the support of several senior military commanders in Nuer, subsequently declared the rebellion. The conflict between government forces and militias loyal to President Kiir and forces associated with Machar caused massive mass displacement, exacerbating the country's vast preexisting development needs and problems.

Furthermore, the battling continued persistently for more than 20 months, while regional mediators impeded progress in peace negotiations under the auspices of the Intergovernmental Authority for Development (IGAD, an East African Regional Authority). The warring parties periodically returned to the agreement on the cessation of hostilities in January 2014, but repeatedly violated it. The warring parties reached an agreement in August 2015 after missing a number of deadlines for the signing agreement set by the regional leaders and under the threat of international sanctions, including the proposed arms embargo. President Kiir signed the agreement more than a week after Machar with reservations, describing the agreement as factious and as an encroachment on the sovereignty of South Sudan. Although both sides committed themselves publicly to the implementation of the peace agreement deal, it came to a standstill after its signing.

The main conflict between the two sides has decreased, but the armed conflict has continued. The two sides have repeatedly violated the ceasefire and have formed a new Transitional Government of unity in late April 2016, six months later than originally planned. Machar returned to Juba as leader of the armed opposition to take over the new post of First Vice President, and a new Cabinet was formed according to the principle of power sharing. The mediator failed in order to make the parties agree to demilitarize the capital. According to the negotiations of the agreement reached on by Intergovernmental Authority for Development (IGAD) in August 2015, when Machar returned to Juba, the security details were 1,370. The ceasefire surveillance personnel were unable to confirm whether the government had complied with the security arrangements, according to which many of their own forces were, withdraw from the city. According to statistics, there are still as many as 10,000 or more government troops in Juba and its surrounding areas (Blanchard 2016).

METHODOLOGY

The study used the method of content analysis. The reason for adopting this method is mainly because the study is a qualitative study that relies heavily on documentary evidence when collecting data. Hence, the method of content analysis using secondary data sources has become imperative.

KEY DETERMINANTS OF CONFLICT IN SOUTH SUDAN

This section discusses six main factors contributing to the conflict in south Sudan including: the leadership struggles, ethnicity, natural resources and corruption, lack of justice and human rights violations, mismanagement of the economy and weak institutional capacity.

Leadership Struggles

The SPLM was a signatory to the Comprehensive Peace Agreement, ending the 22-year war in 2005. John Garang, who has been leading the movement since its inception in 1983, was killed in a helicopter crash three weeks after his inauguration as president of GoSS. His long-time deputy SalvaKiir assumed control over the position of the president and drove the south towards autonomy in 2011. However, before the flare-up of brutality on December 15, 2013, already in 2008 there were signs that not everything was good, and that disagreements within the party port ended violence (De Waal, 2014). At that time, the disagreements between the President and the then Secretary-General of the Sudan People's Liberation Movement, Pagan Amm, threatened to undermine the electoral process (Koos and Gutschke 2014).

The distinctions were in the long run settled, and many urged the development of a unified goal as the election and the final referendum approached (International Crisis Group 2014). Notwithstanding, this connection between the President and his Vice President was at edge. Actually, both leaders were already tense that these divergences were ignored in the name of unity within the party in the interim period (2005-2011). The division of the SPLM in 1991 and the reorganization of the SPLM leadership to welcome Riek Machar on his return were partly to blame for the frosty relationship that had been established in the government after independence. It is said that in the year 2010, the two leaders endorsed rival candidates in some key electoral positions, especially the governorships of various states. The strains inside the political class detonated when Vice President Dr. Riek Machar, SPLM Secretary General Pagan Amun, and Madam Rebecca Garang, the widow of the late Dr. John Garang, openly reported their goal to keep running for the post of Chair of the SPLM, and in this way become the President of the nation. Accepting this as a vital concern, President Kiir impeached the executive power of Dr. Rick in April and in July; he disintegrated the government, expelling Riek and others from any government office (International Crisis Group 2014).

Natural Wealth Resources and Corruption

Natural wealth resources have turned into a course for many African countries, in the sense that it has led to a high level of corruption among government officials and in most cases promoted the government to disengage from citizens as they rely on oil revenues rather than tax from citizens. This circumstance applies overall to South Sudan, where oil income constituted 98 percent of the national budget and almost all foreign currency earning (Wel 2013). Therefore, South Sudan has the world's most oil-dependent budget. Clearly, governments that do not rely upon their citizens` taxes appear not to be especially worried about their welfare. This presumption seems to be valid to the circumstance in South Sudan. The government has to a great extent failed to improve the welfare and living conditions of the population.

On the contrary, the government seems to be more concerned about internal competitions related to rent-seeking and access to natural resources and power. Additionally, the government is defaced with turning a lot of elites who move consistently between the frontlines of rebellion and positions in government, as political circumstances change (De Waal, 2014). In South Sudan, political influence is utilized to warrant riches and evidently there is high level of corruption among state authorities. At a point in time, President Kiir reshuffled his whole cabinet in July 2013, thus expelling preeminent elites, for example, previous Vice-President Rick Machar and other cabinet Ministers. President Kiir purposely blamed the pretentious government authorities for corruption (Lunn 2016). In addition, President Salva Kiir accused 75 ministers and officials in 2012 of stealing $4 billion ($4 billion) in state funds

and demanding the return of stolen funds. As indicated by Aljazeera, just 1.5 percent of this sum was really recuperated (Aljazeera 2014). Given the above scenario, one may contend that the conflict in the nation is really a function of displeasure and dissatisfaction experienced by most of the populace. Baffled soldiers, especially junior officers and destitute youths observe the current situation and then take trust in joining militia groups by taking up arms against every imaginable enemy, including the government and even themselves. Because of the high levels of poverty and despair, some youths presently accept that death on the battlefield is more glorious than the gradual death caused by hunger and poverty.

It is widely believed that poverty, anger, frustration and despair may not be direct drivers of violent conflict in South Sudan, but they have played a role in maintaining conflict. The point here is that the above factors made recruiting fighters undemanding for the conflicting parties. Therefore, any South Sudan peace and stability framework must be integrated into a comprehensive and genuine road map for youth empowerment/liberation programs.

Ethnicity

Ethnicity has been the oversimplified clarification of the conflict in South Sudan. The elites, for example, Kiir and Machar have controlled their political intrigue and contrasts and presented them for ethnic patriotism, preparing their kinsmen into taking an interest in a violent clash that has taken a huge number of lives and rendered a large number of South Sudanese destitute and homeless, while others have been turned into refugees to neighboring countries. Undoubtedly, the mass killings of Nuer by the Dinka militias in Juba after the dispute between President Kiir and his former vice-president Machar at the end of 2013 became the pretext for the outbreak of war, which at first was only a political dispute. From that point forward, Kiir and Machar have effectively mobilized key groups of their separate community, in this way, making ethnicity the more convenient and least difficult clarification of the conflict and the barbarities committed against civilians by the warring groups. The assertion that ethnicity is the underlying driver of the contention is prejudiced, given the fact that not all the Dinka's are on the side of Kiir and same is pertinent to Machar among his Nuer ethnic group.

In any case, in South Sudan, this two clans Dinka and Nuer are considered to be the two dominant and most populous (Verini 2014). On top of that, this two clans' predominance of the political space, military, public services and of the state's economic sources referred to a significant obstacle to tranquility and security in south Sudan. More importantly, their dominance interpreted as a type of supremacy fight between the two considerable tribes, this continues to bring about disorder and doubt among different government authorities who consider their people not represented (Elbadawi and Kaltani 2007).

For instance, the Jieng Council of Elders accused Kiir for advancing the split of Dinka clans at some point. Be that as it may, it is impossible to separate ethnicity from the conflict given that the official version is that the conflict was triggered by a coup attempt, of which the alleged coupon conspirators came from a number of ethnic groups in South Sudan led by Nuer whose goal was to impeach President Kirr who is a Dinka. Although the above arguments are important, the available evidence suggests that some Nuer civil servants and soldiers remain loyal to President Kiir's government, and that Rick Machar's followers are not entirely Nuer.

In certain cases, the Nuer opposition forces also killed other Nuers because of their alleged political connection. This should not deny the fact that in many cases, individuals have been principally targeted because of their ethnic connection. Amnesty International has documented cases where civilians have been attacked by various parties with respect to the conflict, mainly on the basis of their ethnicity, which may justify that ethnicity plays a role in the conflict. Our position is that instead of ethnicity, which is the catalyst for conflict, the current conflict in South Sudan incites and nurtures ethnic identity and hatred between tribal groups to a record high, especially among the two numerically large tribes, Nuer and Dinka. Hence, the reverberating wave of tribal fanaticism is a product of conflict. In light of the above mentioned, and given the heightened ethnic sentiment in the country, South Sudan should pursue an electoral system that gives incentives to ethnic and inter-ethnic representation as a way to mollify the belligerent factions. Therefore, the various ethnic groups - not just the Dinka and the Nuers - should be absorbed into leadership / governance roles as a way to stabilize feelings of marginalization, neglect and apathy, especially among the minority ethnic groups (Kulang and Ogbonna 2018).

Lack of Justice and Human Rights Violations

The country's security services have failed to provide public services to their citizens, especially security and justice. During the years of the separatist struggle against Sudan, the army acted with impunity, and this situation continued after independence, when the army committed human rights violations and suppressed anti-government movements, as evidenced by the 2013 Nuer-Juba massacre and the ensuing civil war. In addition, the military lacks professionalism, operating mainly as a militia organization, making it more difficult for the troops to control. Another serious result of the limited security services provided by the government (mainly limited to the capital, Juba) is that more than 90% of the disputes were resolved through the traditional judicial system. These processes, devoid of any formal institutional supervision, contribute to gross violations of human rights, which are often ethnic targets, and create deep trauma for civilians, especially women and children, who are the main victims of the humanitarian crisis (Institute for Peace and Security Studies 2019).

Mismanagement of the Economy

Since independence, the political framework that delimits economic management and budget allocation in South Sudan remains unclear. Security spending devours an enormous portion of the budget (44%) while expenditure on infrastructure development and provision of social services is significantly lower. Oil revenues are diverted to finance consumption of imported products or embezzled by government officials. In the year 2012, for example, President Kiir asked senior government officers to return $ 4 billion of stolen money to the country's coffers. Given the importance of oil to the national economy, oil fields have additionally turned out to be vital strategic goals for insurgents. The struggle to control them has displaced communities and undermined existing infrastructure, further exacerbating the country's severe socio-economic conditions. The heightening of these consolidated components resulted in the December 2013 savagery and the consequent Nuer Massacre in Juba. The crisis was the result of a tension relationship and a competing desire for presidency among SPLM / elites in the post-CPA period, especially between SalvaKiir, an ethnic Dinka, and Riek Machar, a Nuer (Institute for Peace and Security Studies 2019).

Weak Institutional Capacity

The crisis in South Sudan is also linked to the inefficiency of an appropriate institution to deal with and can also mediate conflict that divides into the army, and the general population (Lunn 2016). In addition, above and beyond the political conflict, South Sudan faces a problem of weakness or absence of institutions and the lack of institutional capacity within the state seem to be an example. On the top of the establishment of institutions was based on ethnic aggregation and personality (De Waal 2014).

REPERCUSSIONS OF SOUTH SUDAN CONFLICT

Payton Knopf (2017) indicated that crimes against humanity, mass displacement and mass atrocities depict ramifications of conflicts. While applications of these terms accurately describe the conflict in Syria, they are equally applicable to South Sudan's continuing civil war. At present, South Sudan alongside Syria, Iraq and Yemen, are listed by the United Nations as one of the four 'level 3' (highest level) humanitarian emergencies in the world, and also the only in Africa (United Nations Office). United Nations officials estimate that at least 50,000 people have lost their lives since the outbreak of the conflict, and most importantly, there is no reliable deaths count that exists. Some experts say the death toll may be higher (Blanchard 2016). The conflict in South Sudan is one of the most serious humanitarian crises at present, causing enormous suffering and destruction to innocent citizens. The war has badly affected the entire country which has resulted in rampant disease outbreaks as well as

causing the country`s social fabric fragmented. Additionally to make matters worse, the conflict has damaged the country's economy, contributing to soaring inflation. Also, its implications have already led to shut down of some of the oil fields in some other parts of the state due to insecurity which is an absolute detriment to the economy that depends entirely on the oil revenues. This came as a result of decline in oil production from 500,000 barrels per day to 130,000 barrels per day due to insecurity (Nyadera 2018).

Moreover, all basic services are likewise in ruin, and the government cannot pay civil servants, including the army that protects the state. Moreover, this insecurity has scared away investors across the country which will continue to hamper economics development. Besides the conflict, it has also caused food prices to skyrocket and 70 percent of families in South Sudan go hungry. As many as 6.3 million people are severely facing food insecurity. These numbers are expected to rise as the lean season progresses. This made famine to be declared in the year 2017 and although humanitarian aid has resulted in famine being reversed, however, current food security levels in the country are now much worse. Many markets are closed, and farmers have been displaced from their farmlands. Food is scarce and often prohibitively expensive, meaning thousands of south Sudanese's are in dire need of assistance. This fighting has also compounded food insecurity with malnutrition becoming a greater threat to many. For instance, 180 health centers were destroyed and 235,000 children are at risk from acute malnutrition due the conflict (Jenssen 2018).

Even more, despite the signing of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), the UN Human Rights Council (HRC)-mandated Commission on Human Rights on South Sudan (CoHR) reported in February that women and girls continue to be victims of rape and sexual violence, including gang rape, sexual exploitation, forced marriage, forced pregnancy, forced abortion and the mutilation of sexual organs. In total, the UN Mission in South Sudan (UNMISS) reported 1,157 cases of sexual violence during the year 2018 as compared to 196 cases during the year 2017 (Global Centre for the Responsibility to Protect`s 2018). In addition, this conflict has also resulted in a sharp rise in the number of people fleeing their homes and basic infrastructure such as health and educational facilities have been destroyed. As if that were not enough, tens of thousands of people have been killed in South Sudan as a direct result of the contemporary conflict and millions have been forced to flee their homes as aforementioned. In spite of everything, civilians are the main victims as a result of the fighting, looting and ambushes. On top of that, massacre and recruitment of children into the armies of the warring parties has become rampant (Mulupi 2015). For the fear of their life, majority of the citizens' move out of their towns and villages. Such movement of refugees known as internally displaced persons has been forced to concentration camps where they find insufficient food, water, education and medicine. This leaves them deeply dependent on dubious foreign aid. The conflict has also caused a closed down of some institutions of learning such as primary schools, secondary schools and universities preventing students from pursing their studies.

This in turn increases the prevailing adult illiteracy which makes it impossible to create new intellectual and skilled group of managers in the future to get closer to most of developed African countries and to the western world. According to the UN Refugee Agency (UNHCR), an estimated 5,000 people fled to the DRC and local authorities reported the registration of 14,000 internally displaced persons. During March, hostilities and inter-communal violence in Upper Nile, Unity and the Equatorials also displaced thousands of people.

Unfortunately, there was also lack of access to aid which further exacerbates an already bleak situation. This conflict has caused health facilities to routinely face shortages of key medical supplies putting further civilian lives in danger. In addition to this, in some areas in the country, the population is unable to receive any humanitarian aid because there is active conflict or because aid has been cut off. In April this year, conflict forced the Norwegian Refugee Council (NRC) to cancel critical food distributions in Unity State. Multiple aid compounds and health centers have been looted across the country. Armed groups must allow humanitarian agencies free, safe and unhindered access to people in need. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), a total number of 6.5 million people remain severely food insecure (Global Centre for the Responsibility to Protect`s 2018).

Finally and most importantly, South Sudan is one of the most dangerous countries in the world for humanitarian workers. Since the war began in 2013, a total number of 101 aid workers have been killed in the country and since December 2017, an additional total number of 22 aid workers have been abducted. In April alone, three humanitarian staff was killed and 13 were abducted. Nonetheless, the impact of this insecurity does not just affect humanitarian workers, but also the people they are trying to reach out to. In addition to this, lives are lost when aid cannot be delivered because aid workers are either forced to evacuate or are unable to work in areas with critical needs because of ongoing conflict (Jenssen 2018).

CONSTRAINTS FACING A PEACEFUL RESOLUTION OF SOUTH SUDAN CONFLICT

First and foremost, the latest agreement stipulates that national elections must be held after a three-year transitional period. When political parties compete for votes, the promotion of elections may further displace civilians and accelerate the use of violence against civilians. Regardless of this probability, the understanding does not accommodate a peacekeeping mechanism to avoid savagery during the transition. Another thing that hinders peace is foreign interference. Sudan's President Omar al Bashir and Uganda's President Yoweri Museveni have a history of 'supporting the other side' in the South Sudan conflict. According to a recent report, 'weapons are still entering via Uganda' despite the UN arms embargo against South Sudan. On the other hand, it is known that President Omar al-Bashir

supports many Machar`s rebel generals. At the heart of this external push-and-pull is the desire to gain access to the vast oil wealth of South Sudan. South Sudan's huge oil reserve holds additionally fuel ethnic tensions. Ethnic divisions keep on being an impediment to an enduring sustainable peace. For whatever length of time, that peace arrangement like this one are more centered around power-sharing instead of the even handed appropriation of assets to every single ethnic groups they will keep on falling flat. Ultimately, there are no observing and implementation mechanisms set up to hold the government of national unity within proper limits. The agreement allows the parties to control themselves. This makes it more difficult for the African Union and the Intergovernmental Authority on Development (IGAD) to support the ceasefire. IGAD is an African trade group of eight countries that provides a strategic and integrated framework for regional cooperation. It includes the governments of Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda (Edward Tchie 2019). One of the most brutal phenomena in the history of the conflicts in South Sudan was the reluctance of the parties to the peace agreements to implement it in good faith. Most often, for obvious political reasons, the implementation of agreements is partial, selective and insufficient. This can hinder a sustainable and peaceful resolution.

Another possible obstruction to the implementation of the R-ARCSS agreement could be deep mistrust and suspicion between and among the contracting parties, which cannot remain hidden .Such a contradiction can be understood in the light of the protracted rivalry that has emerged from the experience of horrific and unreliable inter communal clashes between their respective followers across South Sudan. As of December 2016, when the Second Civil War broke out, Kiir repeatedly stated his reluctance and unwillingness to work with Machar, citing the latter's ruthlessness. What is more, Dinka-Nuer predominate the political spaces, military and public services as well as the economic sources of the state, which are mentioned as the main obstacle to peace and stability in South Sudan. The dominance is construed as the highest form of fighting between the two major tribes, which continues to lead to confusion and mistrust among government officials who believe their people are not represented. Moreover, this dominance weakens the inclusiveness of its public services, active institutions and multi-governance development (Elbadawi and Kaltani 2007). Furthermore, the division of existing states is becoming a serious obstacle to peace and conflict resolution mechanisms and could be a serious potential driver of conflict. One of the areas considered unstable is the instability of the larger equatorial region as claimed by Natsios (2012). This is a serious challenge and a worrying escalation of conflict symptoms, as most of these countries may wish to split and become independent in the future. Additionally, President Salva Kiir's dictatorship character in his leadership has become a serious threat to national security and peace in South Sudan. South Sudan is a new country that needs a more accessible and diplomatic leadership style that unites the people of South Sudan rather than separating them.

This can be reflected back when President Kirr terminated his entire cabinet and elected state governors, which provoked a lack of democratic culture to resolve their political differences frequently, thus arising in the ruling party SPLM. According to El Sheikh (2010), this initiative taken by President Kirr could not turn the Sudan People's Liberation Movement and the Sudan People's Liberation Army into an effective civilian ruling parties and professional troops respectively, which is a major challenge for peace and stability in South Sudan. Even more, as reported by Natsios (2012), South Sudan struggled tremendously to achieve independence from the north, and this was in an attempt to provide sufficient and sustainable development to flourish the nation and its citizens or subjects. Lack of accountability for officials puts state-building at risk and the long-awaited peace yield of independence such as peace and security, and infrastructural / institutional development intended to provide public education and health services to the people of South Sudan.

The widespread battling and the political uncertainty witnessed today in South Sudan are due to accelerated, uncontrolled corruption, which suggests the country's weak regulatory, and enforcement mechanisms. Corruption is now widespread in military, legislative and other governmental institutions, and it thus helps to resist leaders who engage citizens in calling for change and transparency in the SPLM government (El Sheikh 2010).

Recent Advances

The civil war has continued since the breakdown of the 2015 peace agreement that was interceded by the Intergovernmental Authority on Development (IGAD). In the meantime, some efforts have been made to attract leaders back to the negotiating table, but all of this is in vain. At the beginning of May 2018, Addis Ababa resumed peace talks, but by the end of the month, the meeting was over without any formal agreement. The two parties dismissed the proposal introduced by IGAD on the sharing of government positions, the governance system of the nation, and, above all, the security plans. However, on June 25, 2018, after intense pressure, President Salva Kiir and Rick Machar met in Khartoum for the first time in two years (Nyadera 2018). A new peace agreement was signed at the end of the meeting, calling for a ceasefire throughout the country as well as sharing government positions. In the northern part of the country, violations of the ceasefire were only a few hours, and both sides accused each other of violating the rules. Since the previous agreement has not been fulfilled, the agreement was violated almost immediately, causing the analyst to doubt whether this particular agreement will last longer. Components that undermine the new agreement are the formation of positions for four vice-presidents, and endeavours to expand the presidential term again by three years – given that elections were supposed to be held in year 2015 but were certainly not. The resumption of oil exploration is another controversial clause in the agreement, which continues to be of concern to the opposition. In addition to the ceasefire, the package of agreements provides for a 120-day

pre-transition period and a 36-month transition period, followed by general elections and the withdrawal of troops from urban areas, villages, schools, camps and the church. It is noteworthy that other groups also found their way in the negotiations, and also had a share of executive and parliamentary positions shared by the two main players. When they signed the agreement in Kampala, Uganda on July 8, 2018, their presence earned them a slot among the proposed four positions of the vice-presidency. Although this peace agreement is a welcome move, it does not sufficiently address the reasons for the collapse of previous agreements (Nyadera 2018). However, the peace agreement that is currently underway to end the conflict is the signature of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) which was held in Addis Ababa, Ethiopia on September 12, 2018. As a result, this peace agreement deal was widely eulogized and praised as an important development marking the dawn of peace. The main purpose of that peace agreement was intended to restore the Agreement on the Resolution of Conflicts in the Republic of South Sudan (ARCSS) of August 17, 2015, which was apparently ruptured by the outbreak of civil war triggered by violent conflict, which broke out in Juba on the evening of July 7, 2016. After July 7, 2016, the strategies to halt that civil war in South Sudan was revived and various measures were taken at national and regional level to ensure peace in the country. The High Level Revitalization Forum (HLRF), set up by the Intergovernmental Authority on Development (IGAD), is a seven-member regional bloc that covers Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda .On 2017 June 12 the extra ordinary Summit of Heads of State and Government on South Sudan was instrumental in bringing together the negotiating parties in South Sudan to revive the ARCSS (Vhumbunu 2019). Among the major parties and signatories of the R-ARCSS are Kiir as president of the Provisional Government of National Unity (TGoNU); Machar from SPLM-IO; Deng AlorKuol of Former SPLM Prisoners (SPLM-FD); and Gabriel Changson Chang of the South Sudanese Opposition Alliance (SSOA). The other six peaceful Sudanese signatories were Peter Mayen Mayongdit, who represents a coalition of political parties; Cornell Kon Ngu, representing the National Alliance of Political Parties; Ustaz Joseph Ukel Abango, representing the United Sudanese African Party (USAF); Martin Toko Moyi, who represents the United Democratic Salvation Front; Stewart Sorobo Budia, representing the United Democratic Party; and Wilson Lionding Sabit, representing the African National Congress (ANC). In addition, 16 stakeholders representing civil society organizations also signed their agreement (Vhumbunu 2019).

Pathway to Progress

In order for successful peaceful resolution to the conflict, the government and its partners must adopt strategies to improve the country's socio-economic status while simultaneously supporting the creation of sustainable peace. This will require the assistance

of the international community to prevent social divisions, maintain stability during elections and strengthen external monitoring mechanisms. The international community, especially the United States, can also provide technical assistance to local institutions for a long time, rebuild local institutions and support social cohesion. This would incorporate helping South Sudan to expand its economy away from a reliance on oil. The establishment of a new national army and the reorganization of the former rebel group into a *bona fide* military force of the South Sudan People's Defense Force, while failing to resolve ethnic tensions, partitioned loyalties and deep-rooted hostile attitudes will not pave the way for peace. In order to give place for peace opportunities, the government must recognize the support of mercenaries who contribute to violence. It must also take steps to address the historical dissatisfaction of the people of South Sudan (Edward Tchie2019).

Ultimately, this R-ARCSS agreement should provide another opportunity for all parties to re-establish constructive working relationships and bring their constituents together in a time of deep-seated social divisions This requires extensive and committed long-term efforts towards incremental steps of trust and confidence-building as the basis for engagement. For this to succeed, all citizens and stakeholders must play their own roles (Vhumbunu2019).

CONCUSION

From the analyses of the study, this article clarifies the conflict crisis affecting South Sudan as the world newly independent country since December 2013. However, the political tensions among major leaders in South Sudan exploded with violence. The political conflict that triggered the crisis was not based on ethnic identity, but overlapped with pre-existing ethnic and political complaints, sparking armed conflicts and targeted genocide in the capital, Juba and other places. The research concludes that the causes of the South Sudan war is mainly based on power struggle, natural wealth resources and corruption, ethnicity, lack of justice and human rights violations, mismanagement of the economy and weak institutional capacity. Unfortunately the ramifications of conflict in South Sudan are by far unimaginable.

Among the many factors mentioned, three major ones namely; political, economic and humanitarian consequences are the very significant ones. Lastly, the research concludes that, there are some challenges in achieving peaceful resolution to end the conflict. Hence, the research recommends the country`s socio-economic status needs to improve to benefit all citizens. In order for the country to have sustainable peace, the government should recognize the support of mercenaries who contribute to violence. Finally, continuous negotiations among the various groups with the involvement of the international community are also a key path to sustainable peaceful resolution to end the protracted conflict.

REFERENCES

1. Andrew Edward Tchie (2019). Why the latest peace deal in South Sudan won't hold, The Conversation. Accessed 2020, https://theconversation.com/why-the-latest-peace-deal-in-south-sudan-wont-hold-113125
2. Aljazeera, (2014). South Sudan President Fires Cabinet, Accessed 22 May 2018. https://www.aljazeera.com/news/africa/2013/07/201372318388499663.html
3. Blanchard, L.P. (2016). Conflict in South Sudan and the challenges ahead.
4. De Waal, A. (2014). Visualizing South Sudan: The Culprit: The Army, World Peace Foundation.
5. Elbadawi, I. A. and Kaltani L. (2007). "The Macroeconomics of Oil Booms: Journal on Lessons for SSA," Development Economics Research Group
6. El Sheikh, El Muck. (2010). "Intergovernmental Transfers", a report presented to the Second Sudan Consortium pgs.19- 20. Journal on International Politics
7. Global Centre for the Responsibility to Protect`s (2018):South Sudan. http://www.globalr2p.org/regions/south_sudan
8. International Crisis Group, (2014). *South Sudan: A Civil War by Any Other Name*. International Crisis Group.
9. Institute for peace & security studies. (2018). South Sudan Conflict Insight.
10. Koos, C. and Gutschke, T. (2014). South Sudan's newest war: When two old men divide a nation. *GIGA Focus International Edition English*, (02).
11. Kulang, T.T. and OGBONNA, C.C. (2018). South Sudan: The dilemma of a protracted social conflict. *Journal of Economic and Social Thought*, *5*(3), pp.265-272.
12. Lunn, J. (2016). War and peace in South Sudan: March 2016 update briefing paper, House of Commons Library, No.7552. Accessed 13 May 2018. [Retrieved from].
13. Mulupi, D. (2015). The cost of war: How the South Sudan conflict is impacting the entire East Africa.
14. Natsios, A.S. (2012). *Sudan, South Sudan, and Darfur: What everyone needs to know*. OUP USA.
15. Nyadera, I.N. (2018). South Sudan conflict from 2013 to 2018: Rethinking the causes, situation and solutions. *African Journal on Conflict Resolution*, *18*(2), pp.59-86.
16. Payton Knopf (2017). If Trump does nothing, 50% of South Sudan's population could soon be gone. The Guardian. Accessed 2020, https://www.theguardian.com/commentisfree/2017/may/22/donald-trump-50-percent-south-sudan-population
17. Thale, Jenssen. (2018). Five things you should know about the conflict in South Sudan.Accessed 2020, https://www.nrc.no/news/2018/june/five-things-you-should-know-about-the-conflict-in-south-sudan/

18. Verini, J.(2014). How the world's youngest nation descended into bloody civil war. *National Geographic*, *10*.
19. Vhumbunu, C.H. (2018). Reviving peace in South Sudan through the revitalised peace agreement: understanding the enablers and possible obstacles. *conflict trends*, *2018*(4), pp.3-11.
20. Wel, P. (2013). Oil dependence is South Sudan's boon – and bane, The National, 10 September.Accessed 13 May 2018, https://www.theguardian.com/commentisfree/2017/may/22/donald-trump-50-percent-south-sudan-population

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CRIME OF AGGRESSION IN INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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Abstract: *The paper focuses on the analysis of the problem of defining the crime of aggression in the international law and international relations, focusing primarily on the historical development of the term from its initial directed efforts, all the way to its modern outcomes. Observing in a historical manner, the establishment of the definition of the crime of aggression, as well as its aligning under criminal offences has encountered several obstacles which resulted in a continuous delay of clear defining what exactly would the crime of aggression encompass. In order to fully understand the matter, the importance of several international documents is undeniable, especially the Charter of the United Nations as well as the Rome Statute of the International Criminal Court.*

Keywords: *Aggression; Rome Statute; International Criminal Court; Responsibility*

HISTORICAL OVERVIEW OF CRIMINALISING AGGRESSION IN THE INTERNATIONAL LAW

The notion of the crime of aggression as it is defined in the modern period wasn't criminalized until 1945, when aggression was taken into consideration as an international crime for the first time, following the events in WWII (Cassese 2008 152). However, criminalizing concrete acts, which are encompassed by the term of the crime of aggression, finds its base as late as the consequences of WWI, which have a considerable influence on introducing the term of the crime of aggression in the international law, and consequential to that, also in the national jurisdictions.

The Period after the First World War

Causes and consequences of WWI left a series of questions and attempts to prevent similar occurrences in the future. A special influence on the development of the crime of aggression can be sought within two documents which emerged based on the experience which the countries had in WWI – the Treaty of Versailles 1919, and the 1933 Soviet Union's Draft Definition of Aggression.

The Treaty of Versailles in 1919

After WWI, a peace treaty between the Allies and Germany with which Germany accepts a complete responsibility for the war and with which specific conditions have been established for the lawsuit against the German army for the violation of the provisions of the law of war has been successfully concluded in Versailles in France (Sayapin 2014, 29). In so doing, the Article 227 of the Treaty is a key that contains the provision which states how the former German emperor Wilhelm II should be tried as a war criminal, to which Germany protested (Sellars 2016, 23).

The former emperor was characterized as a person responsible for committing "the highest violation against international morality and the sanctity of the Treaty" (Paulus 2004, 7). The importance of the provision is manifested in the indirect citing of the terms 'morality' and 'sanctity' within the scope of crime against peace alluding on the term of 'aggression', even though it is not explicitly stated, since the term of the crime of aggression was not defined nor acknowledged at the time (Sayapin 2014, 30). The Treaty of Versailles, especially the aforementioned Article 227 indicates the progress from the term 'crime against peace' towards a terminological transition and approximation to the term of 'crime of aggression' (Paulus 2004, 7). With that, a tendency towards defining related crimes into a distinct, more general term which directs towards listing the term under criminal acts in the following period is evident. The Treaty of Versailles also establishes the League of Nations, which, as an

international organization and the predecessor of the United Nations, has a significant role in strengthening the tendencies of defining the term of the crime of aggression, which will be approximated in a more concrete manner with the further analysis.

1933 Soviet Union's Draft Definition of Aggression

A more concrete attempt to set the definition of the crime of aggression has been proposed by the Soviet Union on the General Assembly of the League of Nations for Security Questions in 1933 (Bartman 2011, 425). Even though, as an independent concept, it does not represent an extraordinary nor in particular is a too important contribution to the general prohibition of the crime of aggression, its significant contribution to the very process of defining aggression undeniable.

The Draft stated how the aggressor in an international conflict shall be considered that state which is the first to take any of the following actions; declares a war against another state, invades by its armed forces the territory of another state without declaring war, bombards the territory of another state by its land, naval or air forces or knowingly attacks the naval or air forces of another state, lands in, or introduces within the frontiers of, another state of land, naval or air forces without the permission of the government of such a state, or infringes the conditions of such permission particularly as regards the duration of sojourn or extension of area and finally, establishes a naval blockade of the coast or ports of another state (*Lettonie – Russie - Traités et documents de base* n.d.).The aforesaid descriptions of acts, which embody the aggressor and assume the existence of the crime of aggression, are the basic contribution to concretization of the very definition of the crime of aggression.

The importance of the Draft is depicted in the continuous calling upon it in various resolutions, charters and acts (such as, for instance the Charter of the United Nations in 1945, the United Nations General Assembly Resolution 3314 in 1974 and the Rome Statue of the International Criminal Court in 1998, which shall be analyzed further in the article) and also is the basis of the modern definition of the crime of aggression, which this article analyses further on.

The Period after the WWII

The key period for establishing the modern definition of the crime of aggression is related to the WWII, as well as its post-war period. From the events that followed not long after the end of the WWII, the Nurnberg processes which encompass the German Nazis trials (primarily through forming and the activities of the International Military Tribunal at Nurnberg) as well as the work of the International Military Tribunal for the Far East within the Tokyo process, stand out as the most important according to the international law significance, all of which will be analyzed as follows (Sayapin 2014, 40-43).

France, UK, USSR and USA founded the International Military Tribunal at Nurnberg in the London agreement in 1945 (Andrassy; Bakotić; Lapaš; Seršić and Vukas 2010, 419), with the intention of punishing the responsible for the committed crimes (Carpenter 1995, 224). The mentioned Agreement contained the Statute of the Tribunal and the criminal provisions which were the legal basis in the Nurnberg processes. In the scope of the Nurnberg processes, Nazi defendants were burdened by the accusations for committing war crimes, crimes against humanity and crimes against peace, which in their definition, contained the phrase "conducting the war of aggression" (Carpenter 1995, 225).

The Statute of the International Military Tribunal at Nurnberg placed the acts of aggression under the term "crime against peace" (Lavers 2008, 300), further stating in the Article 6 that the term means "planning, preparation, initiation or waging of war of aggression, or war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing" (International Committee of the Red Cross).

The mentioned definition points to the connection of the previously mentioned 1933 Soviet Union's Draft Definition of Aggression, drawing parallels with its provisions. Even though aggression was still not being concretized as a standalone crime, but rather the centre of aggression has been evidently categorized within the crime against peace and security, the mentioned actions indicate the efforts taken at the beginning of defining the modern term of the crime of aggression (Carpenter 1995, 226).

The importance of the Nurnberg processes is expressed also in the fact that not only was the crime of aggression beginning to be defined during the trial, but also the understanding developed of the aggression as a state crime, that is, the fact that aggression is a "paradigmatic crime of the state" (Carpenter 1995, 225; Crawford 1994, 147). With it, the necessity to separate, that is, in this particular case the inability to affiliate the responsibility of an individual and the responsibility of the state, became evident. Moreover, this was substantiated with the arguments of the lead British prosecutor Hartley Shawcross, concretely with the standpoints how a state is not an 'abstract entity' and that the acts of the state are in fact the acts of individuals and politicians who had the intention to exercise aggression (Schabas and Murphy 2017, 210). By connecting individual responsibility with the traditional understandings of aggression, the Tribunal broke through the then-existing barriers of the state's sovereignty in order to extend the responsibility for the committed crimes onto the individual as well (Carpenter 1995, 225).

The Tokyo Process and the International Military Tribunal for the Far East

The International Tribunal for the Far East began its sessions in 1946 and its activities were greatly based upon the work of the International Military Tribunal at Nurnberg (Sayapin 2014, 43). With the intention to convict the 28 accused, the International Military Tribunal for the Far East had confirmed the legal solutions foreseen by the Nurnberg processes in its entirety, holding tightly onto relevant opinions of the International Tribunal at Nurnberg, establishing another precedent relating to the establishment of the individual responsibility for the crime of aggression (Takana; McCormack and Simpson 2011, 150). The International tribunal has, with its interpretation, unambiguously confirmed that individuals, and not only countries, are responsible for the committed crimes.

However, what is distinctive to the Tokyo process is that the activities of the International Tribunal for the Far East underwent criticism from within, which is evident in the dissenting opinion of the Indian judge Radhabinod Pal, who characterized the Tribunal as a dangerous manifestation of 'victors' justice' and its legal basis as being incompatible with the international law (Sayapin 2014, 44). The reasons for this should be sought out in the fact that the principle of the working of the Nurnberg Tribunal was applied to the Tokyo process, discarding, however, the fact that the war acts of Japan and Germany are not completely the same, taking into consideration primarily the cultural and traditional mentality differences (Kaufman 2010, 756).

The Establishment of the United Nations and the UN Charter

Towards the end of the WWII, United Nations were formed as a certain successor in title of the League of Nations, which significantly contributed to the regulation of the use of force in accordance with the international law (Sayapin 2014, 46). After the establishment of the UN, the nature and the practice of the use of force which had to be regulated in accordance with the predicted demands established by the UN Charter, was altered (Gordon 1984, 274-275).

The Charter of the United Nations idealistically offers an international frame for the implementation of peace, however, primarily offering a legal frame of advocating human rights and freedoms. This way the Charter imposes itself as a legal basis of post-Nurnberg tendencies of criminalizing the crime of aggression (Sayapin 2014, 46). The UN Charter, regarding the domain that legally regulates the use of force, states how the signatories of the Charter commit themselves to refrain from threatening with force or using force, which is directed against the territorial integrity or political independence of any country, which will be addressed further on in the article by analyzing the core of the definition of the crime of aggression and its elements, as well as a detailed review on the importance of the mentioned article (United Nations 2018).

The United Nations General Assembly Resolution 3314 (XXIX) of 1974

The General Assembly Resolution 3314, which is a certain interpretation of the Article 2(4) of the UN Charter and which explicitly and concretely defines the crime of aggression, is adopted on the United Nations General Assembly session in 1974 (Sayapin 2014, 104). A part of the Resolution which relates to the crime of aggression primarily refers to the 1933 Soviet Union's Draft Definition of Aggression (Solera 2010, 821). The Draft served as a quality base for a more precise defining of aggression as a crime. In Article 1, the Resolution states how aggression signifies "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations" (Official Documents System of the United Nations, n.d.). In Article 3, the Resolution very concretely enumerates the acts of aggression to which it refers:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
(c) The blockade of the ports or coasts of a State by the armed forces of another State;
(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
(g) The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

However, it must be taken into consideration that the Resolution doesn't state the acts of aggression exhaustively, which is inter alia made clear in the Article 4, emphasizing how the exhaustive list is not of a definite nature, and in so doing, refers to the importance of the Security Council and its role of determining other acts which would compose aggression, in accordance with the provisions of the Charter of the United Nations.

The aforementioned Resolution was a guideline to the Security Council's intentions in insisting on acts that can be characterized as acts of aggression, and even though it did not have a binding force but had structural and substantial flaws (which will be discussed further),

it still represents a significant influence on the establishment of the Rome Statute of the International Criminal Court in 1998 and the efforts in defining the crime of aggression (Sayapin 2014, 104).

Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court was adopted on the diplomatic conference of the United Nations General Assembly in 1998 and is an international agreement with which the International Criminal Court was formed. The Statute establishes the functions, jurisdiction and the structure of the International Criminal Court. Simultaneously, the Statute encompasses four basic crimes; genocide, crime against humanity, war crime and crime of aggression. It was the very crime of aggression that presented a polarizing component of the Rome Statute (Weisbord 2008, 170).

During the activities of the diplomatic conference, the discussion imposed was regarding the requirement to add the term of crime of aggression in the text of the Statute, to which the majority of the countries present on the Conference agreed, while the USA and its closest allies were against (Gurule 2002, 4). The opposing parties emphasized the need to differentiate the applicable meaning (of the definition) of the crime of aggression and the procedural execution of jurisdiction over it (Sayapin 2014, 56-57). The opposing parties accentuated how it is unclear in what way will the committers of the crime of aggression be prosecuted if the very definition of the term is not precise and clear in its entirety. To them the manner in which the crime of aggression would be punished in relation to its definition was disputable.

Even though three different definitions of the crime of aggression were offered (Gurule 2002, 11), the participants of the Conference decided on a compromising solution stated in Article 5, Paragraph 2 of the Rome Statute which states how the Court "shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime" (International Criminal Court 2018), meaning the foreseeable alterations and amendments of the Statute and its revision.

Although the Rome Statute offered an incomplete compromising understating of the crime of aggression, its importance is indisputable with the very fact that aggression was placed under the category of fundamental international crimes, especially considering how the epilogue of their forming was manifested in accepting the United Nations General Assembly Resolution's definition of the crime of aggression from 1974.

THE DEFINITION OF THE TERM OF THE CRIME OF AGGRESSION AND ITS ELEMENTS

Observing more thoroughly the historical overview of events which had a decisive influence on concretizing the term of crime of aggression, it is clear how the path towards a precise and concrete definition of that term was very exhaustive. In order to approach the analysis of the existing definition and key elements that define it, it is necessary to study key reasons due to which certain difficulties in defining the crime of aggression existed, their significance as well as their legal interpretation, which will be analyzed in more detail further on.

The Reasons of Inability to Clearly Define the Term of the Crime of Aggression

Since the beginning of the working of the International Military Tribunal at Nurnberg and the International Tribunal for the Far East, criminalization of aggression did not continue, while simultaneously, other fundamental crimes were present in various conventions (Cassese 2008, 154), such as war crimes which are regulated by the Geneva Conventions or genocide which is regulated by the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 (United Nations Treaty Collection, n.d.). Historically speaking, the problem can be observed from various key moments, which this article analyses further on.

The Circumstances after the WWII

First of all, immediately after the end of WWII, in the period from 1945 till 1947, it had been relatively socially easy to punish those responsible for the war, taking into consideration that the victors punished the defeated. A necessity arose not only for the usual procedures which follow after a war (such as reparation), but also for a strict punishment of individuals who willingly participated in war and its planning (Cassese 2008, 154). With that it is evident how the consequences of WWII created suitable circumstances for punishing the responsible for the crime of aggression as well (in the notion and understanding that it had), alluding on to how the definition was sufficient in its then current form. It can be freely concluded how there was no need for a more concrete definition because the given circumstances didn't require it. The reason due to which this attitude changed later through time lies primarily within the desire to prevent crimes of aggression such as those seen in WWII.

The Problem of Permitting the Use of Military Force

The UN Charter in 1945 had established the future system of allowing and forbidding the use of military force. As such, in international relations it was forbidden with the annotation that it can be exceptionally used with the approval of the Security Council or in self-defense, as stated by the Article 51 of the Charter. The prohibition of military force as such was clear. The problem arose within the permission of the use of military force, more concretely within the predictable self-defense (Greig 1991, 366-367).

A question arose when would the use be permitted and under which conditions, bearing in mind that the very term of self-defense is very complex. The UN Charter somewhat concretizes the definition of self-defense through Article 51, defining it as an occurrence when an immediate near threatening danger exists, while on the other hand, the illegal self-defense portrays an attack that is undertook with the goal to anticipate the potential act of aggression.

Framing the term of self-defense consists of establishing exceptions from the rules of prohibiting the use of military force, because when self-defense if permitted, the prohibition of military force is not afflicted, and a state cannot be considered as an aggressor. However, at the same time it is necessary to notice how the sole term is insufficiently concretized since it is left to free interpretation. As it is an exception, it presents a permitted departure from the basic rule, and as such it aggravates the criminalization of aggression. Due to that, the lack of preciseness in this concrete case lead to the inability to clearly define the crime of aggression.

The Circumstances and the Period of the Cold War

Specific circumstances, which characterized the period of the Cold War, lead to the inability to clearly define the crime of aggression. Namely, neither of the blocks wanted to clearly define the term out of fear that it could be used in ideological and political battle between two sides (Cassese 2008, 155). The clear definition of the crime of aggression would, in that case, become one more asset of the conflict and taking this into consideration, the concretization of the term was not only unnecessary but potentially risky as well, therefore resulting in this terminological status-quo. On the other hand, it is important to mention how during the Cold War, the UN General Assembly Resolution in 1974 occurred nevertheless, despite the environment and the circumstances of that time, which leads to a positive shift in the attempt to define the crime of aggression and the deflection from the 'deadlock'.

Review of the Article 2(4) Of the UN Charter and the Significance of the Term of Force

The significance of the UN Charter was already mentioned earlier within the historical frame of building the term of the crime of aggression, however, its importance is also present in the modern international law, especially within regulating the use of force in international relations. Within the term of force lies the very core of the analysis of the crime of aggression, which is manifested in the Article 2(4) of the UN Charter, which also refers to the problem of permitting the use of force as one of the reasons of inability to clearly define the term of aggression (Sayapin 2014, 75).

If it is taken into consideration that the mentioned article of the UN Charter stated how all members "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" (Sayapin 2014, 29) (United Nations 2018), the necessity to approach a deeper analysis of the meaning of term force is irrefutable. Article 2(4) of the UN Charter represents one of the fundamental principles of the United Nations, and as such it didn't offer a qualification of the term of force, but the term is rather indirectly read from the related articles of the Charter (concretely the Articles 41 and 46 that mention the terms 'armed force' and 'armed forces'). Compliant to this, it could be concluded how the UN Charter primarily leans on the military aspect and the understanding of force which is strictly related to armed conflicts. It is indisputable how armed forces indeed do portray force, however, it is necessary to mention how force is not exclusively military, but also exists in forms of physical (but not military) and the so-called indirect force (Sayapin 2014, 81).

Physical force primarily refers to the force which uses means that are not standard in the classical military conflict (Ventura and Gillet 2013, 536). Non-military, physical force lacks the military element and the matter which is considered as 'conventional weapon', even though it often has deleterious consequences which can most certainly be compared to military armed conflicts. This is evident, especially taking into consideration the example of such force, which is manifested in modern terrorist attacks, where means that are not armed in the strictest sense are often used. Specifically, the use of vehicles such as airplanes and vehicles that could be defined as weaponry, since they are used as such, however, this is not their primary purpose (Sayapin 2014, 82).

On the other hand, indirect force refers to the technical and organizational interference of a country in international armed conflicts between other countries or within the territory of another country (Ventura and Gillet 2013, 537). The generality of the Article 2(4) of the UN Charter has neglected the ambiguity of the sole term of force, which is not surprising, having in mind the period when the Charter was adopted, nevertheless, this does not prevent nor does it narrow the area of expanding and building of the understanding the term within the given frames.

However, what mustn't be forgotten while analyzing the Article 2(4) of the Charter is that the Charter refers only to the prohibition of the use of force and withholding from it, while it simultaneously does not refer to the exceptions to the prohibition, which then refers to the argument of inability to define the crime of aggression, as was previously mentioned. It has already been stated how the problem is manifested in the question of permitting the use of force, more precisely, the concrete situations when the force can be used. The stronghold of these situations can be found in the Article 51 of the Charter which stated how the "inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security" is not disputable and that the "measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security".

This confirms what has already been mentioned while stating the reasons for the inability to clearly define the crime of aggression – in general, force is prohibited with the exception that the right to a country's self-defense is not disputable, while the Security Council has a key role where it decides on the justification of the used force for the purpose of self-defense. On the other hand, this point to a certain limitation of the term of self-defense with the goal to prevent excessive and illicit force with the mechanism of placing certain supervision embodied in the institution of the Security Council. With this, countries have the possibility of using force within the boundaries given by the Security Council, since it finally decides what the boundary between the permitted and excessive force is.

The Question of Contradiction to the Legality Principle

Having in mind how the historical development of concretizing the crime of aggression, it becomes clear how the fact of contradiction of the crime of aggression to the legality principle contributes to the difficulty of establishing the definition (Ziskovich 2016, 384). In order to clarify the mentioned statement in the context of the crime of aggression, it is necessary to clarify the term of legality, that is, legality in general and afterwards to frame it within the understanding of the contradiction of the definition.

The legality principle refers to the legal tradition *nullum crimen sine lege*, that is, the principle on how there is no crime without law, implying how what is punishable is only that what is defined by the law. The sole purpose of the principle is depicted in the intention of preventing *ex post facto* law, avoiding the adoption of the law after a certain act is committed and with it adversely affecting the perpetrator. Legality is based on several general determinants; criminal acts must be a part of a written law, it is necessary to precise the criminal behavior and differentiate it from the permitted behavior, punishing mustn't be

retroactive in a way that the person subject to being responsible for the act that was not punishable in the time of its committing and the basis that one must not adhere to the analogy in applying criminal rules. The problem of affiliating legality with the crime of aggression is found in the fact how, unlike in the national legal systems, in the international criminal law the scope of the mentioned principle is unclear, and as such it was not explicitly formulated until the Rome Statute (Glennon 2010, 71). The principle is concretely mentioned in the Article 22 of the Rome Statute which states how an individual won't be criminally responsible unless his act was of criminal nature in the moment of its committing and how the principles, which define the criminal act, cannot be expanded, but rather interpreted restrictively. Taking into consideration the legality principle and the manner in which it had been stated in the Stature, as well as the already mentioned fact that the crime of aggression is a relatively new term, it is evident how a need to apply the doctrine of strict legality exists (of course, along with certain modifications which are present in the international law), which means that the definition of aggression itself must be clear and concise, with a clear emphasis on what is considered a criminal act and refraining from applying retroactivity (Ziskovich 2016, 384). The established thesis will further on be more concretely researched by analyzing the elements present in the definition of the crime of aggression.

Elements of the Crime of Aggression

Taking into consideration the ways in which the defining the crime of aggression was approached, from adopting the UN Charter all the way to the Rome Statute of the International Criminal Court, it can be concluded how the term of aggression is not uniform but rather consists of several key elements. More concretely, those are objective (*actus reus*) and subjective (*mens rea*) elements (Wang 2007, 307).

Objective Element of the Crime of Aggression

The objective element of the crime of aggression implicates the very exercising of acts which can be expressed as forms of aggression. Certain forms of aggression are characterized as illegal and/or criminal acts which are in accordance with those mentioned in the UN General Assembly Resolution 3314 in 1974, more specifically, in the part which refers to the definition of the crime of aggression (Cassese 2008, 158). The definition consists of a general part accompanied by an incomplete list of examples of acts of aggression, which have a purpose of clarifying the general provision (Sayapin 2014, 105).

As was already mentioned, the general part of the Definition stated how aggression is the use of armed forces of one country against the sovereignty, territorial integrity or political independence of another country, or is in any other way contradictory to the UN Charter. It is indisputable how the abstractness of the general provision is evident, however, it is

complemented by further provisions, which serve as examples of clarification, therefore, for instance, invasion or the attack of armed forces of one country on the territory of another, bombarding with armed forces the territory of another country, blocking the ports and shores of another country with armed forces, attack on land, air and marine forces of another countries are mentioned. Despite the fact that the provisions which state the examples of the crime of aggression are incomplete, a certain common characteristic of all mentioned examples is evident; the crime of aggression was never committed by one individual, but rather always resulted by collective action. A leader's individual responsibility in a political or military sense is not undermined, but it implies a thought-out planning and leadership of aggression by people who are present in the leader's narrow circle all the way to the executor of aggression, which only confirms the establishment of the existence of the mentioned collectiveness within the crime of aggression (Cassese 2008, 159).

Apart from referring to the UN General Assembly Resolution 3314, the definition given by the Rome Statute must also be mentioned, which claims in its definition how the crime of aggression consists of two main parts – the actions of the individual and the action of the state. Such division leads to the understanding how the state is the party that, in principle, has to execute the act of aggression, in order to ascribe to the individual, who is the citizen of that country, that he is the one that has also committed the act of aggression (Ziskovich 2016, 390).

In order for the acts of aggression to be considered as such, they must fulfill two conditions; a use of armed forces must be present and their usage must be directed against the sovereignty, territorial integrity or political independence of another country (Schachter 1984, 1621). Only in that context the individual's responsibility can be discussed, which is depicted by fulfilling cumulative conditions - that he prepared, initiated or executed an act of aggression, that he was in a position of power and that this act of aggression presents an obvious breach of the UN Charter (Ziskovich 2016, 391).

The first two conditions are somewhat clear and indisputable even though they are of vague nature, which cannot be said for the third condition of 'obvious breach of the UN Charter' that remains unexplained in the Rome Statute which does not find an interpretation for it. It is so because the UN Charter does not contain any provision that explains what exactly is considered by the breach of the Charter, and the fact that every country interprets the Charter and its possible breaching differently, is not without significance.

Subjective Element of the Crime of Aggression

Apart from the fact of the existence of the act of aggression and its execution as the objective element, the intention of committing the crime must exist as well (Cassese 2008, 159). This intention, in fact, represents the subjective element, which proves that the perpetrator had the will to participate in planning and/or carrying out the aggression and

was aware of the consequences, circumstances and the significance of committing such an act. The existence of the subjective element is of the utmost importance, because in that way a clear difference between the perpetrators who had the intention of executing the crime of aggression by themselves and those who were forced in any way to participate in aggression and cause its consequences. The Rome Statute further explains in the Article 30 how the individual will be considered responsible and punishable for the crime of aggression by the International Criminal Court if the objective elements of the crime of aggression are committed with intention and knowledge. The intention is seen when, in relation to the act, the individual has the aim to execute the act and there is knowledge and consciousness regarding what the consequence will cause. Therefore, it can be concluded how the *mens rea* element of the definition of the crime of aggression refers to the fulfillment of three elements; an individual as a potential aggressor has to have the intention of participating in the act, the intention to cause its consequences or at least be aware that they will happen in a normal sequence of events and have the awareness of the consequences (Ziskovich 2016, 396).

IMPLEMENTATION OF PUNISHING THE CRIME OF AGGRESSION AND ITS FUTURE IN THE INTERNATIONAL LAW

Keeping in mind the existing efforts in forming the definition of the crime of aggression, a question is posed regarding establishing jurisdiction over it and the legal future of regulating and criminalizing the crime of aggression in the international law. In order to come to certain conclusions or possibly to real anticipations of probable ways in which the jurisdiction over the crime of aggression will be procedurally executed, it is necessary to review through the role of the International Criminal Court and the Security Council as well as the accomplished progress in the recent assembly of member states of the Rome Statute in Kampala, what is accomplished to this moment.

The Role of the International Criminal Court and the Security Council in Determining Aggression

Up until this point it has been mentioned several times how the role of the UN Security Council is of great importance, especially as a key factor in verifying the justification of using the force, and generally through responsibility for maintaining the international peace and security, which is, after all, the basic task of the Security Council (Andrassy; Bakotić; Lapaš; Seršić and Vukas 2012, 160). This was made possible by the UN General Assembly Resolution 3314 from 1974, primarily focusing on the scope of activities of the Council and counting on its competence in solving the questions of violation of peace. However, it must be taken into consideration how the mentioned Resolution with its definition was adopted during the Cold War, which disabled a more precise defining of the definition of aggression.

With that, the question of vagueness of aggression stagnated until the end of the Cold War when the problem of defining aggression became current again, because even though the Resolution was influential and its importance undeniable, it lacked the context of punishing in the procedural sense (Van Schaack 2011, 511). Observing this, the deficiency of the Security Council as an institution which could solve the question of the crime in a concrete procedural way was evident, and a necessity to establish an institution which would be able to do so arose, finally coming to a conclusion in the form of the International Criminal Court. Since the International Criminal Court was formed, the role of the Security Council continuously collides with the assumed role of the International Criminal Court, which should, as a judicial body, act independently, disregarding the influence of political bodies and independent from the countries' approval which was, among other things, predicted by the Rome Statute (International Criminal Court 2018). The tendency towards compromising solutions satisfied both institutions and finally resulted in vague and unresolved definitions of the crime of aggression, that is, the inability to precisely determine the definition, and to the final postponing of any kind of concretizing the definition with alterations and amendments of the Rome Statute and its potential revisions which was, after all, determined by the Article 5(2).

The Conference in Kampala and the Amendments of the Rome Statute in 2010

The colliding role of the Security Council and the International Criminal Court regarding the question of jurisdiction of the crime of aggression was present also during the Revision conference in Kampala in 2010 when the amendments of the Rome Statute were discussed for the first time (Van Schaack 2011, 512). China, France, USA, United Kingdom and Russia along with several key allies advocated the standpoint that limitations should be imposed to the definition of the crime of aggression; especially in the opinion that the UN Charter demands that the Security Council should have an exclusive jurisdiction over the control of punishing the crime of aggression (Ambos 2010, 472). Such a view is understandable, taking into consideration which countries stated those demands. Contrary to the opinion of the mentioned five countries and their allies, many countries of the Latin America, members of the so-called 'African Group' and a significant number of European countries advocated for a broader definition of the crime of aggression along with which the judicial regime would be connected, which would be applicable even without the given acceptance by the countries, as well as the fact that it would be uninhibited by the UN Security Council decisions (Van Schaack 2011, 514).

The finally adopted amendments were greatly in accordance with the General Assembly Resolution from 1974, defining the crimes of aggression as they were stated in the Resolution, with a remark that the amendments will take effect one year after they will be ratified, and only the crimes of aggression committed one year or more after the thirtieth

ratification will fall within the jurisdiction of the International Criminal Court (International Criminal Court, n.d.). It was also decided by the amendments that the prosecutor can open the investigation procedure against the citizen of any country, while the prosecutor's own initiative does not refer to opening an investigation procedure against the country (International Criminal Court, n.d.). An important provision also refers to the fact that the prosecutor cannot act until the Security Council establishes that the crime of aggression occurred, implying the significant role of the Security Council and obeisance to the standpoint which supports its influence (International Criminal Court, n.d.).

In conclusion, what can be said for the modern definition of the crime of aggression is that it consolidates everything mentioned so far, beginning with the 1933 Soviet Union's Draft Definition of Aggression which was a template to the definition within the Resolution 3314 from 1974, out of which the latter is again an inherent paradigm to the last existing concretization of the crime of aggression, while respecting the importance which emerges from the UN Charter.

With these amendments of the Rome Statute, more precisely with the Article 8 *bis* paragraph 1, it is stated how the "'crime of aggression' means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations" (International Criminal Court, n.d.). The conformity with the Resolution from 1974 is further on evident through the paragraph 2 of the same article explaining how "'act of aggression' means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations". Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
c) The blockade of the ports or coasts of a State by the armed forces of another State;
d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

The Future Implementation of the Amendments in the Context of the Activities of the International Criminal Court

The aforementioned provisions of the amendments, which refer to implementing the jurisdiction of the International Criminal Courts, still had a postponing nature, stating the obligation of adopting a decision on the real implementation of jurisdiction by a two-thirds majority on the eventual assembly of the member states of the Rome Statute after the 1st of January 2017. This obligation was fulfilled in December 2017, when the Assembly of the member states of the Rome Statute was held, with the assignment to activate the jurisdiction of the International Criminal Court over the crime of aggression deciding on the concrete date for applying jurisdiction over the crime of aggression to be the 17th of July 2018 (International Criminal Court, 2017).

Taking into consideration how the amendments of the Rome Statue on the Conference in Kampala were adopted, it is evident how it was no longer the question of defining, but rather of applying the definition; the member states have surprisingly achieved a consensus on the term of the crime of aggression; the problem of disagreement could possibly be manifested in the provisions concerning the carrying out the jurisdiction that the International Criminal Court would have over the crime of aggression due to the colliding relationship with the Security Council regarding that matter.

The existing provisions which refer to the jurisdiction were accepted also partly because the member states of the United Nations approached the defining of these provisions in a two-tier manner, dividing the question of jurisdiction on Article 15 *bis*, which explains the implementation of jurisdiction over the crime of aggression in the case of member states' referral and in the case of *proprio motu* investigations (that is, the investigations by the International Criminal Court's own request, more concretely, the prosecutor who initiates the investigation based on the information within the jurisdiction of the International Criminal Court) and, on the other hand on the Article 15 *ter* which refers to the implementation of jurisdiction over the crime of aggression in the case of Security Council's referral (Heinsch 2010, 734).

The main differences between the two articles is the fact that, in case of Security Council's referral, there is no need to determine the act of aggression, nor does the prosecutor have to wait for the determination. On the contrary, a special procedure is

established for the cases of member states' referral and *proprio motu* investigations, in which the prosecutor first must ascertain whether there is a determination of the act of aggression given by the Security Council, and if not, the prosecutor must wait six months before it can continue with the investigation (Ambos 2010, 472). It is evident from the given information how the role of the International Criminal Court in implementing jurisdiction over the crime of aggression is, tentatively speaking, not independent, but rather that there is an influence of not only the Security Council, but also the member stated of the Rome Statute. To clarify the above mentioned, one has to pay attention the paragraph 4 of the Article 15 *bis* which conditions the implementation of jurisdiction over the crime of aggression with the fact that the member state, for which it is established that it performed an act of aggression as is defined by the Rome Statute, can previously, thus prior to initiating the procedure, declare that it does not accept such jurisdiction, turning in the mentioned declaration to the scribe.

Further on, what must be taken into consideration is also the situation concerning the country that is not a member state of the Rome Statute. In that case, paragraph 5 of the Article 15 *bis* is relevant, which clearly states that the International Criminal Court won't exercise its jurisdiction over the crime of aggression when committed by the country's nationals or on its territory by the country that is not a party of the Rome Statue. Even though it is a relatively reasonable and logical provision, the legitimacy and jurisdiction of the International Criminal Court is put into question as well as the efficiency of punishing the crime of aggression, if the institution itself, responsible for exercising the carrying out the criminalization doesn't have a complete jurisdiction in that area.

CONCLUSION

The complexity of the process of precise defining the term of aggression is clearly evident when the complexity of events and legal activities through historical time frame are being analyzed. Despite the fact that this is a relatively new term, its determination went through continuous postponing of concretization, sometimes due to external factors of then current events and sometimes due to the pronounced collision of opinions of inability to form a consensus over the standpoint what should the crime of aggression encompass and what should its definition consist of.

In the intention of clarifying and clearly determining the crime of aggression, the importance of international organizations as well as legal acts adopted by them is evident; the significance of every single one of these acts is undeniable, because their adoption resulted in a certain continuous upgrading and concatenation of new acts onto previous ones, implying a certain agreement and confirmation of good functioning of institutions responsible for the acts nonetheless. With this, a path towards gaining a concrete and clear term of the crime of aggression is facilitated, regardless of the general difficulties which characterized the term and still do today.

The last efforts lead to a significant progress in determining the definition, however, it is important to comprehend how it most certainly isn't the final solution even though it represents a great step towards the goal. A significant challenge is still to come, and it consists of exercising the given definition into practice, where it will be viewed how exactly favorable is the current understanding of the definition of the crime of aggression and how is it applicable, not only theoretically, but in concrete cases as well. Such understanding is not at all restrictive, on the contrary, a wide scope of possibilities which are shown as solution while observing the functioning of the definition as it is defined today, favor and bring optimism for the final confrontation with the definition of the crime of aggression. 

REFERENCES

1. Ambos, Kai. 2010. "The Crime of Aggression After Kampala". *German Yearbook of International Law, Volume 53*.
2. Andrassy, Juraj, BožidarBakotić, DavorinLapaš, MajaSeršić, BudislavVukas. 2010. *Međunarodnopravo I. dio*. Zagreb: Školskaknjiga.
3. Andrassy, Juraj, BožidarBakotić, DavorinLapaš, MajaSeršić, BudislavVukas. 2012. *Međunarodnopravo II. dio*. Zagreb: Školskaknjiga.
4. Bartman, Christi Scott. 2011. "Lawfare and the Definition of Aggression: What the Soviet Union and Russian Federation Can Teach Us". *Case Western Journal of International Law*.
5. Carpenter, A. C. 1995. "The International Criminal Court and the Crime of Aggression".*Nordic Journal of International Law, Volume 64, Number 4*.
6. Cassese, Antonio. 2008. *International Criminal Law*. Oxford: Oxford University Press, Second edition.
7. Crawford, James. 1994. "The ILC's Draft Statute for an International Criminal Court". *American Journal of International Law, Volume 88, Number 4*.
8. Glennon, Michael. J. 2010. "The Blank-Prose Crime of Aggression".*Yale Journal of International Law, Volume 35, Issue 1*.
9. Gordon, Edward. 1984. "Article 2(4) in Historical Context". *The Yale Journal of International Law, Volume 10, Issue 2*.
10. Greig, D. W. 1991. "Self-Defence and the Security Council: What Does Article 51 Require?".*The International and Comparative Law Quarterly, Volume 40, Number 2*.
11. Gurule, Jimmy. 2002. "United States Opposition to the 1998 Rome Statute Establishing an International Criminal Court: Is the Court's Jurisdiction Truly Complementary to National Criminal Jurisdictions". *Cornell International Law Journal, Volume 35, Issue 1*.
12. Heinsch, Robert. 2010. "The Crime of Aggression after Kampala: Success or Burden for the Future". *Goettingen Journal of International Law, Volume 2, Number 2*.
13. International Committee of the Red Cross. 2018. "Statute of the International Military Tribunal at Nürnberg (1945)".
14. International Criminal Court, n.d. "Amendments of the Rome Statute (2010)" Accessed February 20, 2018.
15. International Criminal Court. 2017. "Assembly activates Court's jurisdiction over crime of aggression." *International Criminal Court.*,December 15, 2017.https://www.icc-cpi.int/Pages/item.aspx?name=pr1350.
16. International Criminal Court. 2018. "Rome Statute of the International Criminal Court (1998)".
17. Kaufman, Zachary D. 2010. "The Nuremberg Tribunal v. The Tokyo Tribunal: Designs, Staffs, and Operations". *The John Marshall Law Review, Volume 43, Issue 3*.

18. Lavers, Troy. 2008. "(Pre)Determining the Crime of Aggression: Has the Time Come to Allow the International Criminal Court Its Freedom". *Albany Law Review, Volume 71, Number 3*.
19. Lettonie – Russie - Traités et documents de base n.d. "Soviet Union's Draft Definition of Aggression (1933).", accessed April 26, 2018. http://www.letton.ch/lvx_33sdn.htm
20. Nasinovsky, Evgeny. 1968. "The Impact of 50 Years of Soviet Theory and Practice on International Law.". *American Society of International Law Proceedings*.
21. Official Documents System of the United Nations "United Nations General Assembly Resolution (1974), Article 1", accessed February 17, 2018. https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement
22. Paulus, Andreas L. 2004. "Peace through Justice – The Future of the Crime of Aggression in a Time of Crisis". *The Wayne Law Journal, Volume 50, Number 1*.
23. Sayapin, Sergey. 2014. *The Crime of Aggression in International Criminal Law; Historical Development, Comparative Analysis and Present State*. The Hague: Asser Press.
24. Schabas, William. A. and Shannonbrooke Murphy. 2017. *Research Handbook on International Courts and Tribunals.* Cheltenham: Edward Elgar Publishing.
25. Schachter, Oscar. 1984. "The Right of States to Use Armed Force". *Michigan Law Review, Volume 82, Number 5/6*.
26. Sellars, Kirsten. 2016. "The First World War, Wilhelm II, and Article 227: The Origin of the Idea of 'Aggression' in International Criminal Law". *Cambridge University Press.*
27. Solera, Oscar. 2010. "The Definition of the Crime of Aggression: Lessons Not Learned". *Case Western Reserve Journal of International Law, Volume 42, Issue 3*.
28. Takana, Yuki, Tim McCormack and Gerry Simpson. 2011. *Beyond Victor's Justice? The Tokyo War Crimes Trial RevisitedInternational Humanitarian Law Series*. Leiden: MartinesNijhoff Publishers.
29. United Nations. 2018. "Charter of the United Nations (1945)"
30. United Nations Treaty Collection. "Convention on the Prevention and Punishment of the Crime of Genocide in 1948".
31. University of Luxembourg n.d. "London Agreement 1945.", accessed February 2, 2018. https://www.cvce.eu/content/publication/1999/1/1/cc1beb97-9884-4aa1-b902-e897a8299bec/publishable_en.pdf
32. Van Schaack, Beth. 2011. "Negotiating at the Interface of Power and Law: The Crime of Aggression". *Columbia Journal of Transnational Law, Volume 49, Number*.
33. Ventura, M. J. and Gillet, M. 2013. "The Fog of War: Prosecuting Illegal Uses of Force as Crimes Against Humanity" *Washington University Global Studies Law Review, Volume 12, Issue 3.*

34. Wang, X. 2007. "The Crime of Aggression under the Jurisdiction of the International Criminal Court".*Asia-Pacific Yearbook of International Humanitarian Law Volume 10, Number 3*.
35. Weisbord, Noah. 2008. "Prosecuting Aggression". *Harvard International Law Journal, Volume 49, Number 1*.
36. Ziskovich, Tal. 2016. "The Crime of Aggression: Should Aggression Be Prosecuted as a Crime in the ICC". *Military Law Review Volume 224, Number 2*.

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DRUG TRAFFICKING IN WEST AFRICA BORDERLANDS: FROM GOLD COAST TO COKE COAST

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Abstract: *Drug trafficking has become the new threat to the economic and political stability of the West Africa sub-region; by virtue of its new toga as the new transit hub for drug trafficking. 80% and 13% of seizures in cocaine transhipment annually of 60 – 250 tons to Europe and globally respectively, passes the West African maritime borderlands/coast. The informal economy based on drugs has replaces over $400 million contribution to the region's GDP from fishing. The impacts of drug trafficking had had a long negative toll on the institutions of the states and state-building infrastructure in the region. Besides, intra-states conflicts, drug money and activities had exacerbated state failure in the region; notably in Guinea-Bissau, Mali, Guinea, etc. The West African Coast Initiative is making crawling impacts. Although, still in its pilot phase, it had enhanced coordination of intelligence in the region on drug trafficking and organized crime. However, it is still short of fundamentally addressing obvious policy gap, due to its lack of clear focus; plus, being only operational in just five West African states. This paper identified absence of comprehensive maritime coordination policy against drug trafficking in West Africa as the bane of the surge. Therefore, a tripartite approach, based on state, regional and global levels policy restructuring in the region is required.*

Keywords: *Drug Trafficking; West Africa; Political and Economic Stability; Maritime Policy Coordination; State Failure; Cocaine*

INTRODUCTION

Since the beginning of the century, drug trafficking had assumed a terrifying dimension in the West Africa (WA) sub-region, leading to its emergence as the new transit hub for drugs trafficking, especially cocaine from South America (production origin) to Europe and other parts (consumers). Drug trafficking has emerged the 21st century dilemma to political and economic stability of the region, who hitherto is struggling with fragility. With a decline in demand in the United States, a better controlled Caribbean route, a rising market in Europe, ungoverned waterways in Gulf of Guinea, South American drug traffickers took advantage of the loose West African region as transit zone (UNODC, 20013). Available data shows over 50% of the non-United States bound drugs transit through the West Africa and making 13% of the global drug trafficking index. The enormity of maritime border in the region cannot be overemphasized; about 80% of the 60 – 250 tons of drugs valued at between $3 and $14 billion into the West Africa sub-region comes through the maritime borders (Van Riper; Stephen 2014). The formal economy based in fishing contributing positively to the huge youth unemployment crisis and over $400 million to the region's GDP is being gradually eroded in place of the informal economy based on drugs trafficking; hence transforming the region 'From a Gold Coast to Coke Coast'.

The maritime waters of Cape Verde, Mauritania, Guinea Bissau, Canary Islands, and other countries along the Gulf of Guinea have contributed to the growth in cocaine shipments via West Africa in the last couple of years. The gravity of the challenge may have been more, weak law enforcement compounded by lack of capacity (human/material resources) and other important factors including weak regional coordination have had significant impact. Available data represents only the seizures, which means, it may not have fully captured the actual trafficking flows via the region. United Nations Office on Drugs and Crime (UNODC)'s database reflects this alarming dimension under discuss; the total number of seizures in Europe which came through the Africa region in 2007 was 22%, from 5% and 1% in 2004 and 2000 respectively. An estimated "35% of the cocaine produced and shipped from the coasts of Colombia, Venezuela, the Guyanas, and Brazil is trafficked via the European/African corridor" (Country Report – Colombia 2007, 77-79). The main new trend around various countries on the Gulf of Guinea has been the phenomenal increase in cocaine shipments via West Africa maritime borderlands.

Globally, the issue of drug trafficking, especially cocaine trafficking, the vast bulk of the flow proceeds from the Andean region (Colombia produces half of global flow in 2008 (450 tons), followed by Peru (302 tons) and Bolivia (113 tons) to North America (often via Central America) and Europe (often via West Africa) (TOCTA 2010, 81). The global value is estimated at $88 billion annually; 43% in North America and 39% in Europe. Incidentally, since the 1980s, the consumption in the United States (the largest global consumer of 10.5 million in 1982) has been on a growing downward trend and further plunged dramatically since 2006.

This has been attributed to various factors, ranging from: effective enforcement efforts in the US and counter-trafficking measures in Latin America, disruption in trafficking routes, etc. Similarly, International attention and intervention, as well as political changes, appear to have substantially reduced trafficking through West Africa after 2007 (UNODC 2010). Europe occupies the world's second largest cocaine market besides North America; that is, the 27 countries of the European Union (EU) and the four countries of the European Free Trade Association (EFTA). By 2007/2008, the United Kingdom (UK) stars as the single largest cocaine market in Europe, followed by Spain, Italy, Germany and France. The number of users in the Europe has doubled over the years; from 2 million in 1998 to 4.1 million in 2007/08. This increase means more pressure to create additional route for the expanded demand, according to TOCTA report (2010). Most of the drug trafficking to Europe is done through the maritime waters/sea (as depicted in figure 1.), usually by container shipments.

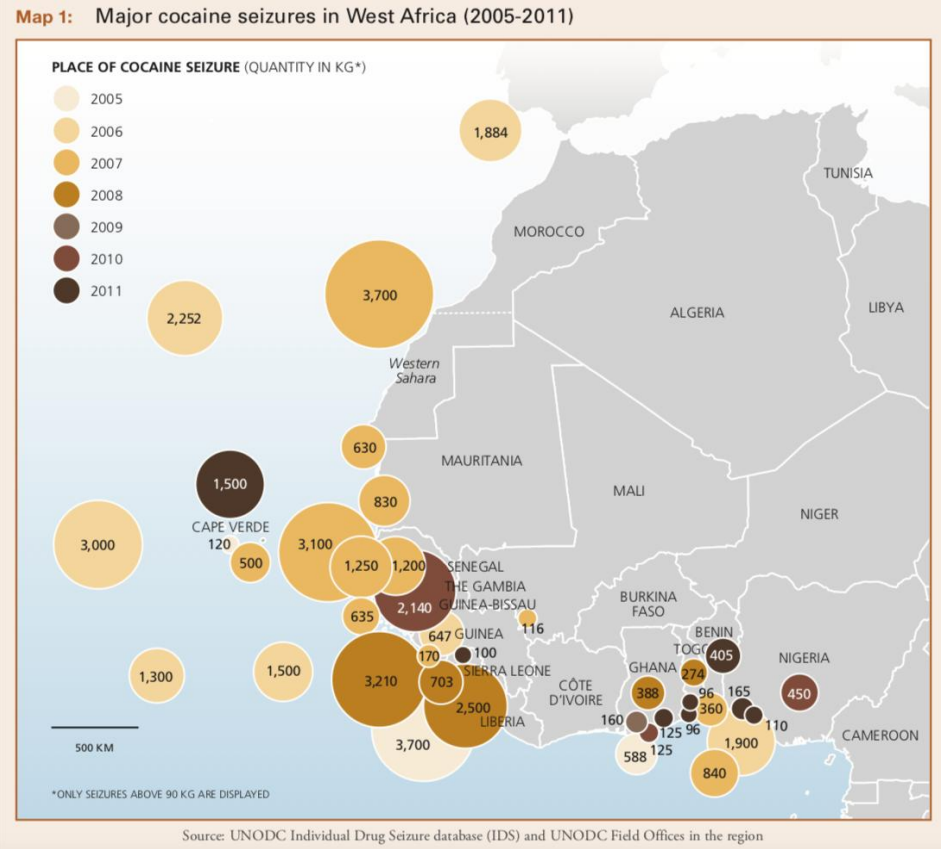

Figure 1: Drug Seizures via Maritime Transshipment in West Africa Coast (Source: UNODC 2013).

However, other means, such as deliveries by small aircrafts/air and cross-border movement or postal services are equally rampant. According to the World Customs Organization (WCO), 69% of the total volume of cocaine seized en route to Western Europe was detected on board boats or vessels, concealed in freight or in the vessels' structure.

The data reveal that, while a large number of smaller shipments are detected at airports and by post, the bulk of drug shipments to Europe are mainly by sea (UNODC 2009). This is where West Africa becomes pivotal to the drug transit to Europe.

The rising demands in Europe and containment/decline usage in North America has shifted the paradigm and necessitated alternative routes to Europe in recent years. Also, the increasing difficulties for direct transshipment from Andean region to Europe, due to high investments in maritime patrol and technology by the European Union (EU); opens the idea for available vulnerable alternative routes, hence, West Africa. Secondly, the absence of unsupervised expanse of maritime waters between the Andean coasts and the West African coast is a dimension susceptible to easy drug trafficking or illicit commodity movements, en-route other destinations. Since the 2000s, two main drugs trans-shipment hubs have emerged in West Africa: one around Guinea-Bissau and Guinea, and the other along the borderlands stretching between Benin, Ghana, Nigeria, etc. corridors. More often than not, the drugs shipments by to the West African coast don't get to mainland before offloaded from mother ships into smaller vessels; which proceeds to Europe through Spain and Portugal, and sometimes by land and air, not just to Europe but Asia and North America. (SOCA 2009) For example, West Africa traffickers have gained prominence in France since 2004, because, Nigerians became top amongst the nationalities of foreign cocaine traffickers; they consist of a third of all arrests among foreign traffickers in 2006 (TOCTA 2010).

The West Africa sub-region is in constant battle with several problems, ranging from poverty, diseases, unemployment, piracy, desertification, etc. Also, among the Transnational Organized Crime (TOC) are: natural resources (including crude oil theft, illegal mining), cigarettes, fake/counterfeit medication, human trafficking (women and children), small arms, toxic waste, and migrant workers. While each of the TOCs affects each country differently, and are serious, but they do not concentrate quick money or financial capital (as cocaine) into hands of a few local lords thereby posing a real challenge to the state. Recent time has seen drug trafficking and illegal dealings in natural/mineral resources dominated West Africa instability discuss (TOCTA 2010). Therefore, the focus of this paper is drug trafficking, more especially, the flow through the maritime borderlands; because of its financial involvement and how it has affected this poor region negatively.

Drug trafficking through the region was earlier detected in large-scale quantity in 2004, signaling a shift in the centre of gravity of the global market from the USA to Europe. However, from 2008, there was declining situation due primarily to international awareness and an increase global focus on the region in order to stem the tide. One of such results led the discovery of states-drug lord's collaborations e.g. the former president of Guinean-

Bissau's sons and senior military chiefs are involved in drug trade, according to West Africa Commission on Drugs (WACD). Drug money had been assumed to be used to prosecute elections in Guinea, Guinea Bissau, Nigeria and other countries within the region.

Since the focus of this paper is the examination of policy failure, especially in addressing drug trafficking through the maritime coast of the region, where over 69% of drugs (according to WCO seizures) into Europe passes through; greater emphasis will therefore be directed at identifying the real policy problem and raising strategic policy options to tackle them. Fundamental to the problem identified is the absence or lack of clear-cut maritime policy that focuses on drug trafficking in the region. However, in the course the research, a few militating factors was contributing to this problem; they include: rampant intra-state conflict and poverty in the region leading to weak/underdeveloped maritime security capacity; the problem of piracy; and non-availability of policy direction on maritime security against drug traffic. In view of these, the paper developed a three-prong policy options focusing on state-level capacity improvement/support; regional-level policy reviews to accommodate maritime aspect; and global-level of leadership. Therefore, the recommendations border on how these three approaches are combined into structural frameworks that can address the policy problem.

IMPACTS OF DRUG TRAFFICKING ON THE WEST AFRICAN STATE-BUILDING

The threat of destruction in local states structure by drug trafficking is enormous and cannot be easily quantify or measured. The deadliest so far witnessed in the region is the destruction or compromising of already weakened institutions and symbols that protect statehood. Drug traffickers are able to penetrate the highest levels of military commands and also install favorite politicians into office through financing of elections. Law enforcement personnel are offered more than they could earn in a lifetime, to just looking away. These control guarantees drug trafficking operations with very little resistance from the state actors. According to the UNODC 2011 Research Paper, the multiplier effect of drug trafficking in the region had frustrated states-building efforts and further complicated the political process (UNODC 2011). Guinea-Bissau provides the first example. A country with GDP of $532 million (2010) (UN Data: Guinea Bissau.), and one of the worst in the region most affected by the drug trade economically and politically. There is no secret that the hierarchy of her military and the political elites are enmeshed in the trade. The country's Chief of the Army (Tagme na Wai) had once accused President João Vieira of involvement in drug trafficking prior to the 2008 elections. Due to rivalry and trade control among the classes, led to the death in 2009 of Tagme na Wai; a reprisal which also claimed the life of the president. This further plunged the already unstable country into much deeper crisis.

Similarly, in Guinea (2009), following the ouster of the long-time country's former dictator through a military *coup d'état*, several senior public officials and the president's sons were discovered to be involved in rings of drug trafficking using diplomatic pouches and passports to move drugs. In 2010, the president of the Gambia busted a ring of drug traffickers comprising high-level public officials and consequently ordered their arrests and prosecution. They include: the National Police Chief and his deputy, Minister of Fisheries, deputy chief of the army, chief of the navy, and chief of the National Drug Enforcement Agency, his deputy and his head of operations. In Sierra Leone, the Minister of Transportation resigned after his brother was implicated in the country's largest cocaine seizure. Since state's actor's involvement in drug trafficking is predominant in West Africa, violence report or occurrences have been very minimal. Scanty evidence exists on dealings of insurgent's groups in drugs. However, the lack of reports could also be associated with absence of empirical or reliable data on homicide in West Africa. Emerging concerns have therefore been the risk of access by some of the dormant militant groups in West Africa; as this will somehow be a game changer. While there has not been a verifiable proof of insurgent groups' involvement, the 2012 political conflict in Mali had linked drug finance to the Tuareg and the Al-Qaida in the Islamic Maghreb (AQIM) back Islamist groups.

The Absence of Clear Regional Maritime Coordination Policy against Drug Trafficking

The absence of clear and coherent maritime coordination policy against drug trafficking in the region is foundational to the current maritime drug crisis. Despite maritime coast contributing to the majority (according to WCU (69%) and Riper 2014 (80%)) of means used to transport drugs from Latin America into the West Africa region en-route Europe, a conclusion supported by the UNODC data/map shown above; there has not been a visibly clear-cut maritime policy direction against drug trafficking either by individual states or at the regional level. This is worrisome and ironical in view of other several policy initiatives targeted at drug trafficking via the air and land. There seems a misplacement of priorities and/or deliberate attempt to shy away from confronting the real issue. Better still; the maritime policies are not synchronized to work together at addressing many challenges from one front. Of course, this is not to say; there are no enough handicaps, some of which are attributed to three main factors:

Weak Maritime Security Capacity due to Inland Political Conflict and Finance

Firstly, undeveloped maritime security capacity due to perverse inland political conflict and poverty; leaving the ungoverned waters at the mercy of drug lords. Virtually all West African states are either in active conflict or recovering/in a post-conflict state-building phase. Greater portion of the state's resources (human and material) are deplored towards inland

armed conflicts management, thereby relegating the maritime security and waterways to the background. Similarly, the Guinea Bissau coup d'état of April 2012 accentuated the notion or thinking of the criminal networks; that, in order to firmly control the drug trafficking access, controlling the state institutions is pivotal (Shaw 2012). In many ways, the TOC networks frustrate state institutions and instigate their underdevelopment in order to provide little or no resistance to their operations. West Africa is famous for being one of the poorest and politically unstable regions in the world. Out of the 16 countries in this region, only three are not on the list of the United Nations least developed countries; meanwhile five of the countries are at the lowest bottom of United Nations Human Development Index. More than half the countries are currently experiencing some forms of instability (LDC Report 2014). It possesses one of the world's current deadliest insurgent group known as Boko Haram (in Nigeria); killing over 13,000 persons since 2009: according to Amnesty International. Perennial insurgent groups exist in Côte d'Ivoire, Senegal, Mali, Niger, etc. The region is still recovering from the memories of brutal civil wars in Sierra Leone and Liberia. Since independence, West Africa has experienced at least 58 coups and countercoups; some as recent as March 2012 in Mali. Nine countries in West Africa sub-region featured, according to a recent rating of the 25 countries with the highest risks of instability globally: Niger, Mali, Sierra Leone, Liberia, Mauritania, Guinea-Bissau, Côte d'Ivoire and Benin (Hewitt *et al.* 2010).

These weights portend a real burden on the ability of the West African states to adequately stand a better chance or develop naval capacity at responding to drug trafficking, especially on the maritime front. Since several of efforts are land-related; only the Army in most West Africa countries is fairly developed. Others don't have the navy personnel or coast guards let alone the equipment (gunboats and others) to patrol and provide some offences/deterrence on the maritime coasts. An assessment of the law enforcement personnel (maritime) responsible for the entire maritime security in 10 of the West Africa coastal states is a little above 200,000: Nigeria having 162,000 (IISS 2015). The figure below represents the enormity of the challenge faced on maritime borderlands, hence, the helplessness.

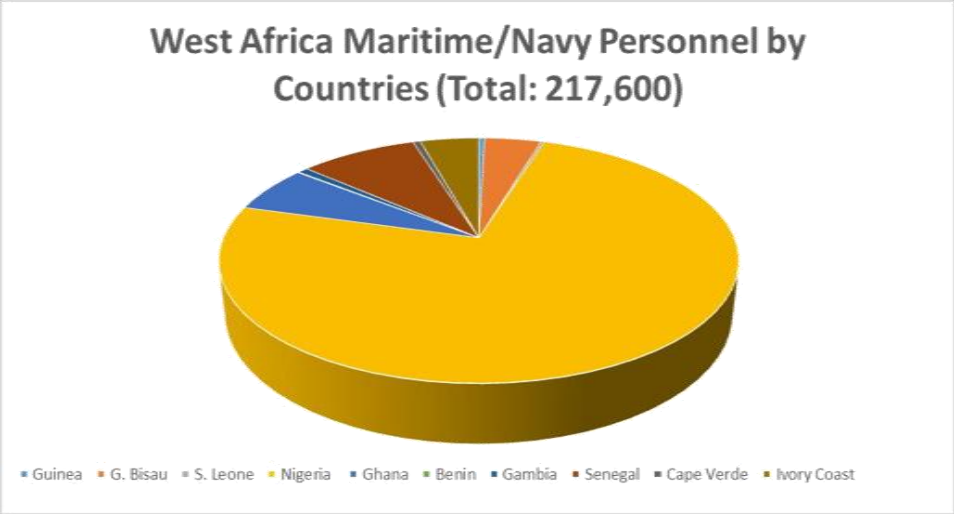

Figure 2: Capacity of Regional Law Enforcement in West Africa
(Source: International Institute for Strategic Studies 2015).

Piracy

The second factor that hinders a coherent maritime policy against drug trafficking is piracy. Piracy is one of the main threats to economic survival of the states. The main focus of the region/states on the maritime borders had been fighting obstacles (commodity seizures, kidnapping for ransom, oil bunkering and armed robbery at sea) on the Gulf of Guinea and the entire West Africa coast; which threatens the economic main stay of the region's export/import. According to the industry magazine Maritime Executive, pirate attacks in the Gulf of Guinea increased by 33% in 2013. The region is the second most dangerous area in the world for maritime transport, as it accounted for nearly 30% of attacks in African waters between 2003 and 2011, according to Maritime First. Therefore, the limited capacity these countries could muster, relating to maritime coast, was directed at fighting piracy for their economic survival. According to UNODC, while piracy is on the decline in the Somalia's Gulf of Aden, it may have shifts in spread to West Africa. While most of the attacks are concentrated around Benin, Côte d'Ivoire, Ghana, Guinea, Togo, among others; majority in this region take place in Nigeria's oil rich Niger Delta region (Ben-Ari 2013). For example, In Benin, 80% of state revenue comes from imports through the Cotonou seaport. In 2013, due to increased pirate attacks in West Africa, Lloyd's Market Association (umbrella group of maritime insurers) lists Nigeria, Benin and nearby waters in the same risk category as Somalia. This phenomenon has led to a significant 28% decline in the Benin revenue and decrease in maritime traffic; and by implication affected the livelihoods of the country's citizens (UNODC 2013).

Choosing to focus their maritime aggression more on piracy than drug trafficking seems logical, but, a one coherent policy on the maritime waters could have been more effective and efficient. Unfortunately, despite the alarming increase in incidences (49 in 2011 and 58 in 2012, while 28 alone in Nigeria in 2013) (The International Maritime Bureau), piracy in West Africa is yet to attract the needed global attention as was in Somalia (June 2008) through the platform of the UN Security Council. Therefore, West African regional and individual state's efforts to fight the problem, reduces the resources (human and material) and focus needed to tackle drug trafficking in the region's maritime sphere.

Maritime Policy against Drug Trafficking

The third challenge inhibiting the policy problem is absence of a wholly maritime policy against drug trafficking in West Africa. In view of the enormity of the impact of drug trafficking on the region, it is surprising to discover no policy; either at state, regional or international level entirely dedicated to confronting the menace via the maritime borders. Closest to it was the West African Coast Initiative (WACI). However, WACI is not entirely coastal initiative, but incorporates other components of land and air means through the Transnational Crime Unit (TCU). This is more so surprising because, despite contributing 80% to the entire trafficking network, little attention is given to maritime compare to other trafficking means. While most states have established drug laws and control agencies, the laws and agencies have little consideration for maritime approach. Regionally, beside efforts being pursued through WACI, there is very little clear policy coordination among the states on drug control on maritime borderlands. Other factors are: official corruption, weak state institutions, language barriers, old states rivalries, lack of maritime technical communication means, etc. (UNODC).

CURRENT MARITIME RESPONSES TO DRUG TRAFFICKING IN WEST AFRICA

Despite the rising number of strategies, policies, initiatives and mechanisms developed at different levels (international, regional, sub-regional and national), they appear to suffer from a lack of comprehensive and integrated strategic framework that puts the round pegs in the square holes. There is no clear-cut response to drug trafficking through the maritime borderlands; however, the WACI initiative incorporated all forms of drug trafficking. West Africa Coast Initiative (WACI), a comprehensive and multi-stakeholder approach to strengthen human and institutional capacity of law enforcement officials, initially in four post-conflict countries to support the implementation of the ECOWAS Regional Action Plan. West African Coast Initiative (WACI) is arguably the only well-intended coordinated policy response in the region. Launched officially in 2009 and being piloted in Côte d'Ivoire, Guinea- Bissau, Liberia and Sierra Leone, and priority to Guinea eventually. West African Coast Initiative

(WACI): a policy initiative of ECOWAS Regional Action Plan jointly instituted by ECOWAS, UNODC, UNOWA/DPA, DPKO and INTERPOL. Still in its pilot phase, and through Transitional Crime Unit (TCU), had enhanced coordination of intelligence in the region on drug issues. In view of the enormity of the challenges, WACI along with other inland mechanisms helped halt the rising tides; reducing the trafficking rates from 47 tons to 19 (about 60%) between 2005 and 2010 respectively. It has provided an operational avenue upon which actions on drug trafficking can be collective in the region. Also, increased cooperation across borders among the pilot countries and creating some state-level institutional changes linking actors from different law enforcement agencies within a country (Annan 2013).

WACI's main impact is the creation of Transnational Crime Units (TCU), meant to enhance national and international coordination, as well as to enable intelligence-based information dissemination. The TCU in each country are to improve law enforcement cooperation and intelligence gathering. They are expected to be each country's elite inter-agency units, trained and equipped to fight transnational organized crime and to coordinate their activities under an international framework (WACI 2013). Through the collaboration of WACI, tremendous progress has been achieved; especially in intercepting transshipments of drugs into the West Africa region; as indicated by Figure1. Close examination of the data reveals majority of the transshipments (numbers and quantity) and interceptions had happened on the sea and at seaports. WACI is a combine technical assistance initiative to help states address criminal networks and illicit activities by strengthening national and regional legal capacities. It leverages on partner's resourcefulness to mitigate and diminishing the threat of organized crime in the region and globally (Peace Operation Review, 2015).

While, WACI had been partly credited with the recent downward trend (successes) in the seizures recorded since its creation, I believe, the reduction may have strong connection with the invigorated intelligence provided by WACI and/or a discovery of new trafficking routes. This initiative is very problematic in many fronts. First, it only bears the name 'coastal initiative'; meanwhile little of its operations have anything to do with maritime. Secondly, it suffers from funding and currently only in pilot phase; operational (TCUs) in five countries out the 16-member states of ECOWAS. Third, the WACI policy initiative does not have coastal security component or capacity for patrol and cannot empower the states for same. Fourth, Both ECOWAS and the AU Action Plans, and some other interventions are not synchronized; they seem to be working at cross purposes.

POLICY OPTIONS AND RECOMMENDATIONS

The policy response to the current gap in the existing framework: lack of clear-cut or absence of a maritime coordination policy against drug trafficking in the region must be handled from: improvement/amendments on existing plan or creation of fresh policy build-up; especially for maritime affairs in view of its relevance as seen in Figure 1. A triangular synergy must be built using bottom-top approach through multi-level collaboration and resources leveraging.

State Level

West African states are not exception with respect to basic laws (some of which are regarded as very harsh) that deal with drug trafficking and even consumption (UN Treaty Collection 2013). Many have drug law enforcement legislation dating as far back as the 1930s. They are members of most of the UN Conventions; a few are: UN Drug Convention (1988), UN Convention on Psychotropic Substances (1971), UN Single Convention on Narcotic Drugs (1961), UN Convention against Transnational Crime, among others. However, internal strives and lack of enablement (funds) to develop a formidable coastal security apparatus hinders all. An overhauling of the state system will make a huge difference. West African countries must develop a strong coastal security agency, with adequate equipment (gun boats and surveillance gadgets) and personnel, if their effort must be complementary with regional and global efforts. Each state should be able to patrol if not up until the international waters, but at least 100 nautical miles offshore and adequately be available at each borderland to its neighbors. A five-year development plan in this regard with funding from African Development Bank/World Bank/EU financing will be appropriate starting from 2016. In the same vein, political stability is critical to success of any new initiatives; West African states needs to evolve an inclusive political process and consultation with relevant actors in order to forge internal peace-building and state-building; thereby reducing its investments in prosecution of war. Similarly, since drug money is used to sponsor politicians in some states and corrupt the military hierarchies, there is concern that some states have been saboteurs or reluctant to work with the regional teams/action plan on the fight. In this light, the civil society organizations in these states should be strengthened to be the watch dog of the society and demand accountability from their government (internal monitors). The limitation in this policy option is that, states in this region are some of the poorest in the world; 13 out of the 16-member states of ECOWAS are in the UN Least Developed Countries, at least five of them are within the 25 poorest countries in the world. Singlehandedly developing maritime capability will be near impossible without outside help. Secondly, since corruption/drug money has permeated the military, purging the institutions is required but might also plunge the country into instability if pushed too hard.

Regional Level

The bulk of this problem is at best handled at regional collaborative level, because, it is a regional threat. However, fundamental to all steps moving forward is the political declaration needed to galvanize and sustain a regional maritime policy process in order to inspire consensus to a common threat. Regional political consensus is a necessary ingredient that allows for mobilizing and sharing of resources. Also, it enhances promotion of an enabling environment required to combat senior state official's involvement in the cocaine trade (UNODC, 2011). To this extent, a wholly independent maritime policy against drug trafficking will suffice. The current WACI or TCU should be divided into two components or departments, or at best separated: one specifically focusing on Inland drug trafficking and the other on maritime. Dedicating an entire structure to maritime waterways will enhance efficient utilization of resources and provide concise policy direction to address the biggest contributor to the region's drug trafficking problem. This will also enable WACI or TCU develop sea patrol capabilities to support the state's inadequacies. The inland will primarily be limited to land and air trafficking means, while both still gather intelligence to compliment the enhanced enforcement ability of member states. According to John Kerry (US Secretary of State), "the security of any region cannot be guaranteed without an effective law enforcement on its territorial waters" (SAMLEI 2015). Similar to the Southern Asia Maritime Initiative, a wholly established robust maritime policy will engender maritime law enforcement capacity and training in areas such as communication, intelligence gathering and monitoring and surveillance.

Secondly, since greater percent of the drugs trafficked through the region are destined for Europe, collaboration is inevitable between ECOWAS maritime framework (to be developed within WACI or TCU as suggested) and EU sea patrol agencies (Frontex); especially for intelligence sharing and interceptions. Establishment of regional security force like the Frontex on the Gulf of Guinea and working in collaboration will be strategic. More so that, the bigger vessels from South America sometime mid-way off-load their drug content into smaller boats and head for Europe from the international waters. The partnership will help close loose ends between the two regions. The Praia Initiative promoted by ECOWAS and supported by UNODC and the United Nations Office for West Africa (UNOWA) to combat the serious security threat posed by drug trafficking in the region; in partnership with the European Union (EU) should be revisited for an amendment. The omission of maritime security architecture against drug trafficking in the Praia conference was a big oversight on the path of the Heads of State and Government of ECOWAS who endorsed the Regional Action Plan in Abuja in 2008. While the process is a home-grown response strategy, its neglected or deliberately excluded plan to cover maritime domain; which contributes the largest avenue for drug trafficking access to the region, making the initiative not only very weak, but unserious. Maritime component must be built into it to enable a comprehensive

policy approach easy to coordinate by air, sea and land. This revision can be done through setting up a specific committee and its recommendations submitted for endorsement by the ECOWAS highest organ. On the other hand, the maritime initiatives in the region could be harmonized to achieve different purposes from one standpoint. E.g. the fight against piracy could be combined with that of drug trafficking, thereby saving duplication of resources and crowding security management on the West African waterways and Gulf of Guinea. The two main regional policies against drugs could play the lead role in this direction. That is, the new AU Plan of Action which is designed to reduce drug harm, supply and demand in the region (IDPC Advocacy Note 2012) and ECOWAS Regional Action Plan, which consists of five thematic focuses: political leadership, national/regional cooperation, strengthening of legal frameworks, confronting drug abuse and associated health and security problems, and data generation.

Unfortunately, while there are specific policy initiatives on piracy in the Gulf of Guinea, besides the general initiatives against Transnational Organized Crime (TOC), there is no policy with specific aim at addressing drug trafficking on the maritime coast of the region (yet contributes 80% to trafficking means into the region). Therefore, this lacuna could provide the window for a single coordinated maritime policy for breaching the two biggest threats (piracy and drug trafficking) to the region's waterways, and economic and political survival.

The constraints of the regional-level policy options are: it might take time to build a maritime force and requires a huge capital investment, which might be heavy for the poor states. Bureaucratic bottlenecks might delay policy initiative, especially when it is government led. The role of spoilers (state agents/narco states), who benefits from proceeds of drug trafficking.

Global Level

Given the reality of the contribution of drug money to armed groups, state fragility, erosion of state legitimacy, corruption of political and security elites, and emergence of drug states (e.g. Guinea-Bissau) in the region; the global community (United Nations and G8) should declare the fight against drug trafficking in the region an emergency.

The international waters directly linking South America and West Africa should be monitored through enhanced collaboration facilitated by UNODC and the international maritime policies dealing with drug trafficking. Something similar achieved in 2006 by the Spanish and British Navy, who intercepted a record 9,853 tons of cocaine on five ships off the coast of West Africa. In order to achieve its goals towards supporting West Africa response to drug trafficking, the EU funded Cocaine Route Programme (CRP) should be repositioned to complement whatever maritime department is created out of WACI or TCU. While the EU Cocaine Route Programme is expected to support West Africa Police Information Systems (WAPIS), Airport Cooperation Programme (AIRCOP), Seaport Cooperation Programme

(SEACOP), and an AML (European Union 2008), this policy paper considers the vagueness as unnecessary distractions. Rather, the programme should concentrate its support on the region's most vulnerable aspect: help to build maritime capabilities to fight drug trafficking. Most relevant and helpful in West African case against drug trafficking is the SEACOP's creation of Joint Maritime Control Units, which will share intelligence with units in targeted West African seaports. This strategy if incorporated into a single maritime coordination policy against drug trafficking as proposed by this policy paper, it will improve interdiction through coordination, information sharing and technical skills; beside the support to the general fight against drug trafficking in the region (Kofi Annan Foundation 2013).

Giving the extent to which corruption induced by drug trafficking has permeated the highest hierarchy of the states in West Africa, according to the World Development Report (2011), the international community through relevant United Nations agencies and G8 (with such capabilities) should assist in efforts to trace illicit financial flows in order to identify involvement, name and shame persons whose income is perceived to be drug-related (World Bank, 2011). Besides South America, the West Africa region remain an area seriously affected by trafficking and corruption, coupled with weak national capacity needed to gather and process information on sophisticated financial transactions, or to investigate and prosecute offenders. The United Nations Security Council should urgently officially recognize drug trafficking, especially on West African maritime waterways as a high-level threat within the TOC family, capable of further undermining the development, stability and security of the region; and provide safe haven for terrorist organizations. The recognition is expected to classify fight against drug trafficking on the region's maritime waters as a conflict prevention strategy that requires UN member states increased cooperation with the United Nations Office on Drugs and Crime (UNODC) and United Nations Office on West Africa (UNOWA) (UNSC, 2009) Finally, the international community must help restore political stability in West Africa region and state-building efforts at strengthening institutions vital to development. The risk of this policy option is that, whereas the situation in the region requires urgent action, global responses are sometimes very slow, political and bureaucratic.

CONCLUSION

The maritime waterways constitute a life-wire to the West Africa region's economic survival and development. A region which emerged in the 1960s following independence wave as one of the most endowed with human and mineral resources. But wars and internal unrest, and lately drug trafficking have negatively impacted its abilities. Since the 2000s, drug trafficking has reduced the region to a safe haven for transnational criminal activities; empowering elements that threatens its stability. Despite several interventions to stem the tide, a fundamental policy error (lack of formidable maritime policy on drug trafficking) had transformed the region from its original good old gold coast region to now cocaine (coke) coast. Due to under-performance of the WACI initiative, collaborations at the states, regional and global levels is capable of extensively curbing the menace and restoring the region on a path of economic and political stability. All mechanisms other than blocking or investing heavily on the source of drug trafficking means into the region (maritime), it will mean, only the symptoms and not the cure is being treated. As inferred in the policy options recommended above, the problem can best be adequately addressed using holistic three-ways methods, incorporating all stakeholders; although at different levels and creating roles for each actor's involvement. For example, at the state–level, we need to quench the fire promoting political instability from inside (via inclusive governance … including minority protection) and equally develop a standing maritime structure or agency responsible for fighting drug trafficking on the country's waterways; at least 100 nautical miles into the Atlantic Ocean and at border points between West African states. At the regional level, it is expected to set the maritime policy direction against drug trafficking in region, incorporating all needed support from bottom (states) and top (global community/resources). While the global-level intervention, both at the Gulf of Guinea and on the international maritime waters connecting South America to West Africa to Europe will provide complimentary support to the regional and individual states efforts; beside training/technical and equipment.

Finally, another catastrophe (to watch out for) that may further compound the already dare situation in the region, if attention is not swift, is brewing local consumption of drugs. There is a massive growing concern over drug use in the region; leading the UN Secretary General to raise alarm that "West Africa is no longer just a transit route for drug traffickers but a growing destination, with more than a million users of illicit drugs. Rising consumption aggravates an already challenging public health environment and threatens socio-economic development" (UNSG/SM 2013). 

REFERENCES

1. Ben-Ari, Nirit. 2013. Piracy in West Africa: A Bumpy Road to Maritime Security, p.12, (Assessed Jan. 28, 2016). http://www.un.org/africarenewal/magazine/december-2013/piracy-west-africa#sthash.d85mMuS3.dpuf.
2. European Union. 2008. "EU Drugs Action Plan for 2009-2012", 2008/C 326/09, December 20.
3. Global Peace Operation Review. 2015. (Assessed Feb. 19, 2016) http://peaceoperationsreview.org/wp-content/uploads/2015/06/2010_west_africa_coast_box.pdf
4. Hewitt, J., Wilkenfeld J., and Gurr, T., eds. 2010. *Peace and Conflict 2010*: Center for International Development and Conflict Management, College Park, MD.
5. IDPC Advocacy Note. 2012."Recommendations for the African Union Plan of Action on Drug Control (2013-2017)".
6. Kofi Annan Foundationi. 2013. International and Regional Responses to Drug Trafficking in West Africa: A Preliminary Overview, WACD Background Paper No. 61. pp. 26-27.
7. Kofi Annan Foundation. 2013."International and Regional Responses to Drug Trafficking in West Africa: A Preliminary Overview". WACD Background Paper No. 61. Pp. 26-27. (Assessed Feb. 19, 2016). http://www.wacommissionondrugs.org/wp-content/uploads/2013/10/International-and-Regional-Responses-to-DT-in-West-Africa-Kavanagh-Walker.pdf.
8. Least Developed Countries Report 2014.
9. International Institute for Strategic Studies (IISS), The Military Balance. N.d.
10. Maritime First (2015, May 12): "Piracy Cost on Nigeria". (Assessed May 2, 2015), https://www.maritimefirstnewspaper.com/2015/05/21/piracy-cost-on-nigeria-intimidating-igbokwe-tells-government/
11. Serious Organized Crime Agency (SOCA). "Annual Report and Account 2009/10: Threat Assessment of Organized Crime". SOCA. London.
12. Shaw, Mark. 2012."Leadership Required: Drug Trafficking and the Crisis of Statehood in West Africa. Policy Brief No. 37, Institute for Security Studies. (Assessed July 13, 2016). https://www.issafrica.org/uploads/No37Oct2012Drugs.pdf
13. Southeast Asia Maritime Law Enforcement Initiative (SAMLEI). 2015. United States Department of State, Bureau of Public Affairs. (Assessed May 19, 2015)
14. https://2009-2017.state.gov/documents/organization/241008.pdf
15. UN Secretary-GeneralStatement and Messages (UNSG/SM), (2013, Dec. 18). Secretary-General, in Security Council, Contrasts Weak Cooperation among States with 'Closely Networked Structure' of Transnational Criminal Groups. SG/SM/15548-SC/11225-AFR/2772

16. United Nations Office on Drugs and Crime (UNODC). 2013: *Transnational Organized Crime in West Africa: A Threat Assessment*. UNODC, Vienna, p.17.
17. United Nations Office on Drugs and Crime (UNODC). 2007."Report of the Meeting of Heads of National Drug Law Enforcement Agencies, Latin America and the Caribbean (HONLAC)". UNODC. Quito. pp. 77-79.October 15-19.
18. United Nations Office on Drugs and Crime (UNODC). 2010.*The Globalization of Crime: A Transnational Organized Crime: Threat Assessment*. UNODC.
19. UNODC. 2009. World Drug Report. Vienna.
20. UNODC. 2010."TOCTA Report". (Assessed Feb. 15, 2016) https://www.unodc.org/documents/data-and-analysis/tocta/4.Cocaine.pdf
21. UNODC. 2011. "The Transatlantic Cocaine Market: A Research Paper", pp. 49 – 51.
22. United Nations (UN) Data. 2016. "Guinea Bissau". (Assessed Jan. 19, 2016) http://data.un.org/CountryProfile.aspx?crName=guinea-bissau
23. UNODC 2016. "Transnational Crime Unit (TCU)". (Assessed Feb. 28, 2016) https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TOC/waci.html
24. United Nations Treaty Collections. 2013. http://www.wacommissionondrugs.org/wp-content/uploads/2013/10/International-and-Regional-Responses-to-DT-in-West-Africa-Kavanagh-Walker.pdf
25. United Nations Security Council (UNSC). 2009. "Peace and Security in Africa: Drug Trafficking". December 8.
26. UN Secretary-General's Remarks at Security Council meeting on Drug Trafficking in West Africa and the Sahel. New York. December 18, 2013.
27. Van Riper, K. Stephen. 2014. "Tackling Africa's First Narco-State: Guinea-Bissau in West Africa". Peacekeeping and Stability Operations Institute Paper, United States Army War College Press, Carlise, PA.
28. West Africa Coast Initiative (WACI). (Assessed Feb 18, 2016) https://www.unodc.org/westandcentralafrica/en/west-africa-coast-initiative.html
29. World Bank. 2011. "World Development Report: Conflict, Development & Security".

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CONSUMER PROTECTION AND NEW CONTRACT LAW IN THE EUROPEAN UNION AND IN ITALY

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Abstract: *This paper deals with the recent normative modifications introduced in the European Union by the Directive 2011/83/EU (aimed to realise a full harmonisation of member states' rules in some aspects of consumer and contractual law), and consequently in Italy, through the Legislative Decree No. 21/2014 (which transposed the supranational source). As it is known, the principal legal instruments used in the last years by the EU to protect the weak parties are the 'information duties' and the 'right of withdrawal'. The new rules try to strengthen them, but the implementation of the European Directive in Italy gives rise to many arguable points and perplexities.*

Keywords: *Consumer Protection; New Contract Law; Information Duties; Right of Withdrawal; Codice del Consumo*

INTRODUCTION

To start a discussion on consumer protection and new contract law in the European Union and in Italy (Alpa 2014; Mazzamuto 2012; Musio and Stanzione 2009; Di Porto and Lorenzoni 2012), it could be useful to give an answer to some basic question, like this one: does the juridical inhomogenity among the member states constitute an obstacle (an 'invisible barrier') to the realization of the European integration project? And, if the answer is yes, in order to solve the problem: is it enough a mild harmonization of the domestic rules (so called 'soft' or 'bottom-up' normative approach) or is it necessary to unify national legislations ('top-down approach')? (Lando 1997, 524ff.; Howells and Schulze 2009). At the moment, the EU seems to prefer the first solution (reached through the legislative instrument of a directive), even if in the last years the European institutions have been choosing the way of the 'maximum harmonization'[1].

The legal basis for the progressive convergence of contractual law is today contained, *inter alia*, in two provisions of the Treaty on the Functioning of the European Union (TFEU): Art. 114[2] and Art. 169[3]. In addition, a series of other important European documents contributes to establish the legal framework[4] (rules contained in the Treaties, or in other fundamental '*para-constitutional*' acts, such as the Charter of the Fundamental Rights of the European Union) (Ferraro 2006, *passim*.)[5].

[1] As it is emphasized in the 2nd *considerando* of the Directive 2011/83/EU, "full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders. Both consumers and traders should be able to rely on a single regulatory framework based on clearly defined legal concepts regulating certain aspects of business-to-consumer contracts across the Union. The effect of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area. Those barriers can only be eliminated by establishing uniform rules at Union level. Furthermore consumers should enjoy a high common level of protection across the Union". Tonner – Fangerow (2012), underlined that the "full harmonisation approach has the advantage that the European legislator is able to decide which aspects of a problem should be regulated so that member states are not allowed to deviate from the European rule, but that member states are free to regulate problems which are neglected by the European legislator or which did not appear yet at the time when the relevant European legislation was adopted. It allows fully harmonising European law prevailing to national law and at the same time leaves some space for autonomous national legislation. So it seems to be the adequate interim step on the long way of the European integration process" (p. 78). In the matter, cf. also D'Amico2012, 611ff.; and Mak 2012, 213ff.

[2] According to the Art. 114 TFEU, par. 3, "The Commission, in its proposals… concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective".

[3] The Art. 169 TFEU, par. 1, establishes that "In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests".

[4] The Treaty of Maastricht (1992), in particular, introduced a new title - currently the XIV of Treaty CE consolidated version - expressly dedicated to the 'protection of consumers' and a new Article, 129 A, in virtue of which the Union attributes specific competences in this matter to adopt measures in accordance with Art. 100 A, and promoted actions of support and integration of the politics developed by the Member States. The Treaty of Amsterdam (1997) reformulated Article 129 A, obligating EU institutions – through a horizontal type clause – to consider the consumers' demands in the definition and the implementation of the other Community policies and activities and to expressly recognize the consumers' right to organize themselves for the safeguard of their own interests (Art. 153,2 Treaty CE).

[5] The Art. 38 (Consumer Protection) provides that "Union policies shall ensure a high level of consumer protection". It is not clear if it is possible to discuss of 'real' human rights.

The European Community understood that if in the national laws there are too many disparities, then distortions of competition may arise between the sellers and suppliers, namely when they sell and supply in other Member States (Cafaggi and Muir Watt 2007). For this reason, in order to facilitate the establishment of the internal market and to safeguard the citizen in his role as consumer when acquiring goods and services under contracts which are governed by the laws of European Countries other than his own, it is essential to remove the normative differences which appear excessive[6].

The European Union tried to achieve this aim through many directives on consumer protection, like the Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees, the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices, the Directive 93/13/EEC on unfair terms in consumer contracts, the directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, the Directive 2008/48/EC on credit agreements for consumers, and more recently the Directive 2011/83/EU on consumer rights (Schulze 2015, 139ff.; Collins 2006, 217). With regard to the situation in Italy, although some authoritative doctrinal voices spoke of a real 'normative desert' a few years ago (Ferrara 1989, 515) recently attention has been focused on the establishment of "the expected consumer bill of rights" (Alpa 2002, 4), namely Law no 281 of 1998, initially, and subsequently the so called '*Codice del consumo*' (cons. c.)[7].

CONSUMER PROTECTION AND CONTRACT LAW: THE NEED FOR A STRONGER WEAK PARTY DEFENCE IN THE NEW TYPES OF PURCHASES

Alongside the more traditional forms of contracting (in-store), in the recent years the protection of purchasers in case of contracts negotiated away from business premises (or door-to-door)[8] or at distance[9] is assuming a growing importance in Europe. In relation to this

[6] A strong unification of the national laws could, of course, enforce this goal. Nevertheless, as Tonner and Fangerow (2012), remarked, "the full harmonisation principle was subject to heavy criticism by member states and academic writers as well, because it bore the danger of leading to a reduction of the consumer protection standard in those member states with a high standard. The EP welcomed the full harmonisation principle but at the same time argued against any reduction of consumer protection in member states" (p. 69).

[7] Art. 2 of the *Codice* enacts *expressis verbis* that it is possible "to recognize consumers and users the following fundamental rights: a) safeguard of their health; b) safety and quality of products and services; c) suitable information and fair publicity; d) education for consumption; e) fairness, transparency and equity in contractual relationships concerning goods and services; f) promotion and development of a free, voluntary and democratic association between consumers and users; g) the supply of public services according to quality and efficiency standards".

[8] According to Art. 1 of Directive 85/577/EEC, contracts negotiated away from business premises are contracts concluded: "during an excursion organized by the trader away from his business premises, or during a visit by a trader (i) to the consumer's home or to that of another consumer; (ii) at the consumer's place of work; where the visit does not take place at the express request of the consumer.2. This Directive shall also apply to contracts for the supply of goods or services other than those concerning which the consumer requested the visit of the trader, provided that when he requested the visit the consumer did not know, or could not reasonably have known, that the supply of those other goods or services formed part of the trader's commercial or professional activities. 3. This Directive shall also apply to contracts in respect of which an offer was made by the consumer under conditions similar to those described in para. 1 or para. 2 although the consumer was not bound by that offer before its acceptance by the trader. 4. This Directive shall also apply to offers made contractually by the consumer under conditions similar to those described in para. 1 or para. 2 where the consumer is bound by his offer".

type of commercial transactions, more incisive instruments of protection have been established: before purchase (pre-contractual obligations to make the consumer more informed about his choice), during the purchase (with regard to the modality of the conclusion of the contract, i.e. the way the consensus with the consumer has been obtained) and after purchase (compliant or other mechanisms of redress such as restitution or substitution of the product)[10]. A very central role is anyway accorded to the supplier's pre-contractual obligations and above all to the 'prior information'.[11] Information duty increases with distance (because the purchaser is not able actually to see the product or to ascertain the nature of the service provided before concluding the contract) or when the consumer is hit 'cold' (and cannot properly evaluate whether the agreement is convenient or not)[12]. The obligations *de quibus* are supported by the right of withdrawal that offers the consumer the opportunity to reconsider a contract within a certain period of time[13].

Both these instruments were recently modified through the Directive 2011/83/UE of 25 October 2011 (Tonner and Fangerow 2012, 67ff.; Giliker 2015, 5ff.; Argyros 2014, 275ff.), which was transposed in Italy by the Legislative decree No. 21 of 21 February 2014 (Cuffaro 2014, 747; D'Amico 2015; Delogu 2009, 953; Dona 2009, 582; Gambino and Nava 2014; Mazzamuto 2011, 868; Pagliantini 2012, 325 and 2014, 797) ('the last step of a legislative process which has seen, over the years, a substantial strengthening of the consumer protection law and an extension of the Italian Authority's competences'[14]).

[9] In the Art. 1 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contractsis clarified that 'distance contract' means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded".

[10] Consumers may, above all, act for breach of their rights, with two measures: the restoration of the *status quo ante* (through reimbursement, substitution or cancellation) and the application of additional penalties.

[11] See Article 4 and 5 of Directive 97/7/EC.

[12] In the 37th *considerando* of the Directive 2011/83/EU it is clearly underlined that "since in the case of distance sales, the consumer is not able to see the goods before concluding the contract, he should have a right of withdrawal. For the same reason, the consumer should be allowed to test and inspect the goods he has bought to the extent necessary to establish the nature, characteristics and the functioning of the goods. Concerning off-premises contracts, the consumer should have the right of withdrawal because of the potential surprise element and/or psychological pressure. Withdrawal from the contract should terminate the obligation of the contracting parties to perform the contract".

[13] As it has correctly been evidenced by Rott (2007): "EC Directives that primarily use information obligations, frequently but not necessarily in combination with the right to withdrawal, are the Doorstep Selling Directive 85/577/EEC, the Consumer Credit Directive 87/102/EEC, the Timesharing Directive 94/47/EC and the Distance Selling Directives 97/7/EC and 2002/65/EC. Even the Consumer Sales Directive 1999/44/EC that grants the consumer rights once goods are not in the conformity with the contract, separates the informed average consumer from the uninformed consumer in a certain way. Its Art. 2 (2) lit. d) on the relevance of public statements uses a 'reasonable consumer expectations' test that very much resembles the average consumer test of the law of unfair commercial practices. Obviously, regulation that purely relies on information obligations and the right to withdrawal would leave those consumers alone who are less educated and insensitive to information, and who therefore have no reason to reconsider a contract after a second look at it either" (p. 51).

[14] Argentati (2014) underlines that: "the Decree on one hand introduces novelties in the consumer contracts regulation, mostly regarding distance contracts, stipulated online or by telephone, but also in traditional contracts stipulated inside business premises. On the other hand, the Decree states some important provisions in relation to administrative protection conferring an exclusive competence to the Authority to enforce the new rules and definitively establishing the choice of the unitary principle in administrative consumer protection".

THE ITALIAN *CODICE DEL CONSUMO* AND ITS RECENT MODIFICATION

The first collection of all EU consumer protection legislation has been a consolidated Act: the Legislative Decree No. 206, dated 6 September 2005, which came into force on 23 October 2005 (De Cristofaro 2006, 764ff.). It brings the provisions of 21 legal measures together in a single text, called *Codice del Consumo*, synthesising them into 146 articles (the number of articles has been increased to 170 since 2007 update). The Code is a text mostly compilation (summary), regrouping rules already known in the Italian private law system, but it was often reformed and updated. And, as said, one of the most important innovations was realized through the Legislative Decree No. 21/2014. This normative document separately deals with, along the lines of the Directive: i) "Consumer information for contracts other than distance or off premises contracts" (section I; ii); "Consumer information and right of withdrawal for distance and off-premises contracts" (section II; iii) "Other consumer rights" (section III). The 2014 reform in particular introduced a new regime regarding the right to withdraw (the so-called *ius poenitendi*). Before analyzing the most recent rules in the matter, it is interesting to underline that the recent Law concerns Title III (Contractual Modality) of Part III (Consumer relationship) of the *Codice del Consumo*, totally rewriting Chapter I, not more known as "'Particular modalities of contract conclusion', but 'Consumers rights in contracts'. This name, equal to the title of the Directive, testifies the ambitious objective of the legislator – which it is easy to understand in the Proposal of the Directive 8 October, 2008 (COM(2008)614 def.) – of reconsidering the four fundamental Directives on consumer law" (85/577/CEE, 93/13/CEE, 97/7/CE, 99/44/CE) in order to create a sort of European statute of consumer rights as far as contractual provision is concerned. Nevertheless, the Directive 2011/83/EU and Consumer Law did not pursue this objective, because the rules still regulate contracts away of business premises and distance contracts.

THE AREA OF APPLICATION OF THE NEW FRAMEWORK TO PROTECT CONSUMERS

The Legislative Decree 21/2014 opens with three general provisions, (Artt. 45, 46, 47) to define the subjective and objective area of application of the new regulation (Rumi 2015, 32ff.). Art. 45 contains a rich series of definitions, beginning with the one of 'consumer' and 'professional', which should be interpreted *per relationem*, that is to say, by re-conducing them to Art. 3 definitions of the *Codice del Consumo*. The main characters of the consumer bargaining are so unchanged. Particularly, as far the notion of "consumer" is concerned, the reserve of the real physical person should be kept the same, it is the only one who can make use of (Calvo 2003, 715ff.; Chinè 2006, 434ff.). Italian legislator has indeed renounced to the possibility of "extending the rules of the Directive to legal persons or to natural persons who are not consumers within the meaning of this Directive, such as non-governmental organisation, start-ups or small and medium-sized enterprises", in accordance to the content

of the 13rd *considerando* of the Directive 2011/83/EU. With regard to the objective aspect: the area of effectiveness of new rules is defined "positively" by the new Art. 46 and "negatively" by the Art. 47 cons. c.

Article 46 states that Sections from I to IV of Chapter I "The provisions of Subchapters I to IV of this Chapter apply to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis." At first impact, this provision seems to incredibly enlarge the possibilities for the application of the law, included the right to withdraw. If we look through the Decree and the previous Directive carefully, we can admit an expansive capability for the new Art. 46.

The new regulation cannot be extended to 'every operation of consume', because it is limited to sell contracts, contracts for the supply of water, gas, electricity, when these products are not sold in a limited amount. It could be also limited to district heating and the ones dealing with a digital content, not on a material support, but on download or streaming. We are not dealing with a new general legislation for business to consumer contracts, as the Chapter I can induce to do. Actually, the expression 'every contract concluded between a consumer and a trader' is not neutral indeed, in relation with the modality of conclusion of a contract. It should be contained just to the contracts concluded away from business premises or to the distance ones. In their scope, due to the trans-typical aspect of the regulation, we can include not only sales and services contracts, but also –and that's the *novum*, the contracts for the supply of water, gas, electricity, district heating, which can't be restricted to one specific volume or to an undetermined quantity and they cannot be included neither in sale contracts nor in the service ones[15].

The Art. 47 contain a long list of Exceptions[16], and it is very interesting to underline the provision of its par. 2, elaborated to prevent and neutralise every traders' fraudulent conduct. According to this rule, "the provisions of Sections I to IV of this Chapter shall not apply to off-premises contracts for which the payment to be made by the consumer does not exceed EUR 50. However, the provisions of this Chapter shall apply in the case of several contracts

[15] The peculiarity consists of the fact that all of these contracts, if concluded off-business premises or at distance will receive a really strong or the highest protection, constituted by Sections II, III e IV of Chapter I cons. c. (particularly information requirement, obligation in form and withdrawal of repentance). Contrarily, if they are concluded with aggressive facts, they will receive a lower protection, but totally new, which is constituted by the application of the rules of the information requirements (Section I), and by the provisions included in Sections III (other rights of the consumer) and IV (administrative and jurisdictional protection, Jurisdiction and unsolicited supplies) of Chapter I.

[16] As it is possible to read in the 49th *considerando* of the Directive 2011/83/EU, "certain exceptions from the right of withdrawal should exist, both for distance and off-premises contracts. A right of withdrawal could be inappropriate for example given the nature of particular goods or services. That is the case for example with wine supplied a long time after the conclusion of a contract of a speculative nature where the value is dependent on fluctuations in the market ('*vin en primeur*'). The right of withdrawal should neither apply to goods made to the consumer's specifications or which are clearly personalised such as tailor-made curtains, nor to the supply of fuel, for example, which is a good, by nature inseparably mixed with other items after delivery. The granting of a right of withdrawal to the consumer could also be inappropriate in the case of certain services where the conclusion of the contract implies the setting aside of capacity which, if a right of withdrawal were exercised, the trader may find difficult to fill. This would for example be the case where reservations are made at hotels or concerning holiday cottages or cultural or sporting events".

concluded at the same time by the same parties, if the overall amount of the payment to be made by the consumer, regardless of the amount of the individual contracts, exceeds EUR 50".

THE REMEDIES TO PROTECT THE CONSUMER: INFORMATION REQUIREMENT

An aspect substantially new of the last regulation is represented by the generalization of information duty "technique" (De Cristofaro 2014, 929; Occhiuzzi 2014, 10; Alessi 2013, 315; De Cristofaro 2012, 30ff.), intended as the possibility to extend the information requirement to inform to the contracts, whose obligations were not still be provided and, therefore, regulamentated (we intend here different contracts either from the ones negotiated at distance or out of commercial places and referred to specific commercial juridical provisions). This is confirmed despite the fact that the inner laws of Art. 48 are different from the one belonging to Art. 49 for distant contracts and away from business premises.

There are just two limits of the process of generalisation: a) Contracts which entail daily transactions, immediately executed at the moment of their conclusion; b) Apparent information deducted from the context.

It is worth to emphasize that individual remedies to be applied in case of failure to fulfil the information requirement are not detected, but it must be reminded that it is possible a recourse to the Art. 22 cons. c. as far as unfair commercial practices are in case of: a) belated execution of the information requirement (e.g. just before the conclusion of the contract), without allowing the consumer to produce a valid contractual determination (misleading omission); b) uncomplete, incomprehensible or ambiguous information; c) failure of 'contractualisation' of the pre-trade information and its consequent absence of binding elements.

The Art. 49 cons. c. deals with the information requirement off-business premises and distance contracts. It unifies and enlarges the regulation, endowing more effectiveness. Before the process of reform, the regulation was different whether the contract were to be concluded away from business premises or a distance contract: the art 47 old paper stated that the professional had to communicate to the consumer just the information related to the existence and modalities to exercise *jus poenitendi*, whilst, secondly, previous Art. 52 cons. c. requires a communication of further data from the professional to the consumer.

THE FORM OF INFORMATION

The provisions on the information requirement risks to remain without effects, due to the absence of new provisions according to the Artt. 50 and 51, which introduce specific "requirements" in terms of form of information (Pagliantini 2015 in G. D'Amico (eds.), 167ff.).

The Art. 50 cons. c., defiled "Formal requirements for the contracts negotiated away from business premises" does not introduce the written form as a structural element of these contracts; it quite remarks the exigency of having a 'binding form' of the information to be available anytime to the consumer. It could be a paper, but also another durable tool. In both cases, the consumer could be protected as it will be facilitated by the possibility of having information on a stable support; furthermore the stable support will be binding for the professional in the contents mentioned or promised before the conclusion of the contract. Information shall be legible (graphically e typographically), simple and comprehensible (in terms of its content). Professional is required to deliver to the consumer 'a copy of the signed contract or confirmed', also here 'on paper or, with the consumer's agreement, on other forms of stable tool'. The document fulfils to a double function: a) it promotes a further thought of the consumer, with regard to the content of contractually made commitment and to the opportunity of getting rid of it, through *jus poenitendi*; b) it enables the consumer to verify eventual differences between preliminary received information and information included in the contract, with the possibility of pretending that the professional be pledged to the conditions proper of pre-contractual disclosure. The new form of regulation not only unifies the juridical treatment but also it enriches the content. In fact, whether the contracts we are discussing about, concern the provision of inner market services and e-commerce, the amount of information is supplemented by the provisions, contained in legislative decrees 59/2010 and 70/2003, considering further integrations, according to legal provisions of Art. 6 § 8, dire. 2011/83/EU.

Moreover, so as the information be effective, the Italian legislator, by virtue of the possibility pursuant to Art. 6, § 7, so as to make information more effective has provided that the consumer shall receive all the amount of information in Italian; contrarily, the professional would be charged of demonstrating the respect of information requirements.

The Art. 51 cons. c., paragraph 2 and 6, states form requirements not only with regard to information, but also the contract, particularly, the phone and the telematic ones. Whilst the distance contract shall be concluded with electronic means, the consumer shall place his order online. This order constitutes the obligation of paying, just by a click, and it shall mention "order with obligation to pay"; indeed, this last sentence will make the consumer conscious of the importance of the act of purchasing. This formal process protects the consumer, avoiding that the provision intended as free of charge, hidden e.g. a subscription contract for consideration, and immunises the act of the professional, who has acted according to a standard of diligence.

THE SECOND REMEDY TO PROTECT THE CONSUMER: THE RIGHT OF WITHDRAWAL

The institute of withdrawal is, without any doubt, the one most modified by the new regulation (Rumi 2015, 183ff.; S. Pagliantini 2015, 275ff.; Pilia2008; Barca 2011; Benedetti 2011, 964; Farneti 2014, 963; Ferrari 2010, 7ff.; Grandi 2013, 69). The right in question has been defined as an "instrument of reaction for consent captation techniques, which are incredibly fast and elusive or, at least, able to reduce the capability of the weak contractor to value calmly the offer he need to face with" (Benedetti 2011, 964).

About the area of operability of the remedy, it can be immediately made a point on the Art. 46 that, at least at first impact, seems to legitimate the application of all the regulation introduced by the novelty to 'every contract concluded between a professional and a consumer'. According to the heading of Section II and the formulation of 1§ art 52 cons. c. that, excluded the hypothesis ex art 59, recognizes to the consumer a period of 15 days to withdraw from the contract, a right of rethink seems to emerge, coherently with its inspirational ratio: it has a reason of being just in the presence of sale negotiated through these modalities. With regard to the strategic role assigned to the withdrawal by the European legislation, it is possible to underline that the alignment of the juridical treatment of the right of withdrawal has revised its main function.

From a classical mean of protection, it became a remedy in order to guarantee the certainty of Law in the EU. It is, therefore, suitable today to contrast the legislative fragmentation between the Member States and appropriate to offer a clear and defined regulatory prospect (Yilma 2013, 212ff.).

Here the 'double soul' of *jus poenitendi,* characterized for some aspects by the *favour consumatoris* (thanks to the Art. 54 cons. c. the statement of withdrawal from the form *ad validitatem*is unburdened*;* see also Art. 52, 2° par, n. 2, cons. c., which admits a partial withdrawal in case of juridical values made of 'several lots' or 'multiple pieces') and, for other aspects, by the *favour mercatorum* (the Art. 59 cons. c, includes a series of Exclusions, as the right to rethink, linked by the scope of promote enterprises).

The new regulation of the repentance could be mostly appreciated, considering the unification and the extension of the deadline to withdraw (Art. 52, cons. c.), the consequences of an eventual breach of the obligation to inform (Art. 53, cons. c.), the effects of the withdraw in relation to the duties of the parties (Art. 57 cons. c.) and the sort of fringe contracts (Art. 58 cons. c) (Guzzardi 2012, 228ff.).

As regards the procedure in exercising this right, the written form is no longer required, rather, the consumer must inform the trader presenting any type of unequivocal statement or by using a harmonized withdrawal form (included in attachment I, part B).And as it has been argued "this measure aims to simplify the procedure, especially in order to reduce costs for the trader in cross-border sales (Argentati 2014, 168).

OTHER CONSUMER RIGHTS

The new regulation enriches the series of the weak party's protection instruments, adding new profiles under the heading "Other consumer rights" (Pagliantini 2015 in G. D'Amico (eds.), 264ff.). It deals with heterogeneous dispositions having different applications[17]. The Articles 61 and 63 cons. c., indeed, by dint of being related to the delivery and the passing of risk, apply just in sale contracts. Article 62 (Fees for the use of means of payment), 64 (Telephone communication) e 65 (Additional Payments), apply both in sale and service, the supply of water, oil, electricity, telewarming and digital contents.

CONCLUSION

The new regulation has certainly renewed the asset of the *Codice del Consumo*, focusing on its central part on Consumer Relations. Despite its title (Consumer Rights in Contracts) and the scope to reach a global harmonisation, the new asset looks deficient and deliberately ambiguous (De Cristofaro 2014, 217ff.).

The relevant part on the information requirements (Art. 48 and 49), on additional payments without the expressed consumer consensus (Art. 65) are bound to be implemented. In addition, a possible solution to fill the gaps could be realised by reconducing the professional behaviour in the misleading omissions *ex art* 22 cons. c.

Quite ambiguous is the provision of the Art. 51, § 2, cons. c, which introduces new formal requirements for distance contracts by placing the order online, since gives to the interpreter the commitment to translate the neutral non-binding nature of the contract.

Not so clear is the Art. 51 § 6, in fact it is difficult to imagine a contract that can be concluded on a paper, but also because it could generate a process of signature exchange. The phone contract can easily become amorphous, not more formal. Even *jus poenitendi*, real pillar of the consumer protection, leaves a bit of perplexity, as it could be activated with perfected contracts and simple contractual proposals.

However, the most arguable provision is the Art. 67 cons. c., which is a closure rule and admits the competition of several rules, from the European Union, that concedes rights to consumers. The result is the presence of doubts if the competing rules are not compatible among them. According to the doctrine, this eventuality is not covered by the extension of the Art. 67 (D'Amico 2015, 29 ss.). The article in question could just find effectiveness when the rights of Chapter I include rights without a civil penalty.

[17] Argentati (2014) speaks of "three distinct practices (...) that are, on one hand, inspired by the discipline of unfair business practices, and on the other hand, introduce two significant prohibitions from a private law perspective. In the first scenario, we must underline the prohibition for the trader to impose additional fees on the consumer compared to how much the traders themselves pay by using certain means of payment (...) The regulation, in substance, imposes a clear opt-in for the consumer and seems to prohibit opt-out mechanisms frequently used by operators in the sale of goods or ancillary services; it is up to the consumer to expressly refuse the service which is otherwise inferred as requested or accepted (e.g. pre-ticked boxes)" (p. 169).

In this case, it is possible to apply the remedies provided by the European legislator in favour of the consumer; thus, the weak party can cumulate all of these remedies with the protection provided by other rules of European legislation. 

REFERENCES

1. Alessi R. (2013), *Gli obblighi di informazione tra regole di protezione del consumatore e diritto contrattuale europeo uniforme e opzionale*, *Europa e diritto privato*.
2. AlpaG. (2002), *Il diritto dei consumatori*, Laterza, Bari-Roma.
3. Alpa G. (eds.) (2014), *I contratti del consumatore*, Giuffrè, Milano.
4. Argentati A. (2014),*The main innovations of the Italian Legislative Decree no. 21/2014 transposing the Directive 2011/83/EU on Consumer Rights*, *Rivistaitaliana di Antitrust*.
5. Argyros G. (2014),*Implementation of the Consumer Rights Directive: Greece*, *Journal of European Consumer and Market Law*, Issue 4.
6. Barca (2011), *Il diritto di recesso nei contratti del consumatore*, Milano.
7. BenedettiA. M. (2011), *Recesso del consumatore*, *Enciclopedia del diritto*, *Annali IV*, Giuffrè, Milano.
8. Cafaggi F. – Muir Watt H., (2007), *The making of European Private Law: Regulation and Governance design*, 5, available at: *http://www.ihs.ac.at/publications/lib/ep13.pdf*.
9. Chinè G. (2006), *Uso e abuso della nozione di consumatore nel codice del consumo*, *Corriere di merito*, n. 4/2006.
10. Calvo R. (2003),*Il concetto di consumatore, l'argomento naturalistico ed il sonno della ragione*, *Contratto e Impresa/Europa*.
11. CollinsH. (2006), *The Alchemy of Deriving General Principles of Contract Law from European Legislation: In search of the Philosopher's Stone*, *European Review of Contract Law*.
12. D'Amico G. (2012),*Direttiva sui diritti dei consumatori e Regolamento sul diritto comune europeo della vendita: quale strategia dell'Unione europea in materia di armonizzazione?,Contratti*.
13. D'Amico G. (2015),*Introduzione*, in G. D'AMICO (eds.), *La riforma del codice del consumo. Commentario al D. Lgs. n. 21/2014*, Milano, 2015.
14. De Cristofaro G. (2006), *Il "Codice del consumo"*, *Nuove leggi civili commentate*, n. 5/2006.
15. De Cristofaro G. (2011), *La direttiva 2011/83/UE sui "diritti dei consumatori": ambito di applicazione e disciplina degli obblighi informativi precontrattuali*, in A. D'Angelo – V. Roppo (eds.), *Annuario del contratto*, Torino.
16. De Cristofaro G. (2014),*After Implementing Directive 2011/83/EU in the Member States: Are the National Provisions on Consumer Contracts Really Harmonised? Some Critical Remarks*, *Journal of European Consumer and Market Law*, Issue 4.
17. De Cristofaro G. (2014), *La disciplina degli obblighi informativi precontrattuali nel codice del consumo riformato*, *Nuove leggi civili commentate*.
18. Di Porto F. – Lorenzoni L. (2012), *Consumer protection in Europe*, 5-6, availableat*www.iern.net*.
19. Farneti M. (2014),*Il nuovo recesso del consumatore dai contratti negoziati fuori dai locali commerciali e a distanza*, *Nuove leggi civili commentate*.
20. FerraraR (1989), *Consumatore (Protezione del) nel Diritto Amministrativo*, *Digesto delle discipline pubblicistiche*, Utet, Torino, vol III.
21. Ferrari C. (2013), *Ipotesi di qualificazione per il <<recesso>> del consumatore*, *Rivista di diritto civile*.

22. Ferraro A. (2006), *Competition Law and Consumer Protection in Italy, the EU and the UK*, *Rivista italiana di diritto pubblico comunitario*.
23. Giliker P. (2015),*The Transposition of the Consumer Rights Directive into UK Law: Implementing a Maximum Harmonization Directive*, *European Review of Private Law*, Issue 1.
24. Grandi M. (2013), *Lo*juspoenitendi*nella Direttiva 2011/83/UE sui diritti dei consumatori*, in *Contratto e Impresa/Europa*.
25. Guzzardi G. (2015), *Sub artt. 56, 57 e 58*, in G. D'AMICO (eds.), *La riforma del codice del consumo. Commentario al D. Lgs. n. 21/2014*, Milano, 2015.
26. Howells G. G., SchulzeR. (eds.) (2009), *Modernising and Harmonising Consumer Contract Law*, Sellier, Munich.
27. Lando O. (1997)**,***Why Codify the European Law of Contract*, in *European Review of Private Law*, vol. 5.
28. Mak V. (2012), *Full Harmonization in European Private Law: A Two-Track Concept*, *European Review of Private Law*, Issue 1.
29. Mazzamuto S. (2012), *Il contratto di diritto europeo*, Giappichelli, Torino.
30. MusioA. –StanzioneP. (eds.) (2009), *La tutela del consumatore*, *Tratt. Bessone*, vol. XXX, Giappichelli, Torino.
31. Occhiuzzi P. (2014), *Gli obblighi informativi*, *Corriere giuridico*.
32. PagliantiniS. (2015),*L'ibridazione del nuovo recesso di pentimento*, in *Rivista di diritto civile,* n. 2/2015.
33. PagliantiniS. (2015),*Sub artt. 51*, in G. D'AMICO (eds.), *La riforma del codice del consumo. Commentario al D. Lgs. n. 21/2014*, Milano, 2015.
34. PiliaC. (2008), *Accordo debole e recesso*, Giuffrè, Milano.
35. Rumi T. (2015), *Sub artt. 45, 46, 47*, in G. D'AMICO (eds.), *La riforma del codice del consumo. Commentario al D. Lgs. n. 21/2014*, Milano, 2015.
36. Rott P. (2015), *Consumers and Services of General Interest*: *Is EC consumer law the future?,Journal of Consumer Policy*.
37. Schulze R. (2015), *The New Shape of European Contract Law*, *Journal of European Consumer and Market Law*, Issue 4.
38. Tonner K. –FangerowK. (2012),*Directive 2011/83/EU on consumer rights: a new approach to European consumer law?*, in *Journal of European Consumer and Market Law*.
39. YilmaK. M. (2013),*Sope of Rights of Withdrawal vis-à-vis Auctions under the Consumer Rights Directive*, *Journal of European Consumer and Market Law*, Issue 4.

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SEASONAL WORKERS BEFORE THE COVID-19 ERA: ANALYSIS OF THE LEGISLATION WITHIN THE CONTEXT OF EASTERN EUROPE

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Abstract: *This paper analyzes the phenomenon of the seasonal workers in Europe before the Covid-19 pandemic and discusses the legislation for intermediation job intermediation agencies in several East European countries such as Bulgaria, Romania and Poland. Additionally we discuss the typical patterns for seasonal migration in European context. We also analyze the situation of seasonal workers in Scandinavia (the berry picking activity in Sweden), in Spain (the orange picking in the Mediterranean regions) as well as the Ukrainian seasonal workers in some of the Visegrad-4 countries (Poland, Czech Republic and Slovakia). Finally, we briefly discuss some novel approaches which might be used as regulation mechanisms.*

Keywords: *Seasonal Workers; Intermediation Job Agencies; Eastern Europe; V4 Countries; Visa Formalities*

INTRODUCTION

There are several economic sectors which employ seasonal work force, due to the natural fact of the changing year seasons. Agriculture is the main one. Each year a mass two-way migration occurs in many European countries, where seasonal workers go from their place of living to the place of work. This migration could also be called cyclic migration as those people return home after the work has been finished.

Usually, the wholesale prices of the products that are produced by employing seasonal workers are as a big percentage of the production costs go for wages (Agri 2019). Governments have implemented regulatory terms that pretend to make the working and salary conditions of the workers better. However, due to relaxed control, different legislation in countries of the same economic area and liberal tariffs in international trade, these policies have backfired most of the times, creating sometimes cases which can be legally classified as labour trafficking or forced labour.

Numerous publications have discussed the seasonal work phenomena along the European history (Bade 2008) and have analysed these phenomena in the context of Western Europe and the United States (Power 2014), the East West migration patterns in an enlarging Europe (Dietz 2002), as well as within different contexts such as the role of the Eastern European migrant farm workers in Norwegian (Rye, 2010), the UK's (Dawney 2008) and Mediterranean's agricultures (Gertel 2014), the irregular employment of immigrants in the European Union (Aparicio 2008, Arango 2009, Maroukis 2011) or the adaptation of Ukrainian labour migrants to the Polish work market (Bieniecki 2009).

Based on the previous analysis, in this paper we compare different factors in the migration of season workers in Europe. We explain several cases of season workers flows; we analyze how the local legislations influence the choice of destination countries. In order to achieve this, we analyze the laws which regulate the intermediation job agencies in Bulgaria, Romania and Poland. We also analyze the laws regulating the berry picking industry in Northern Sweden and discuss seasonal work patterns in Spain as well as the Ukrainian seasonal workers in the V4 countries.

The paper is organized as follows: in Section 2 we make a comparison between different European countries in terms of the legislation for intermediation job agencies. Section 3 is devoted to the analysis of the usual destinations for migration, while Section 4 discusses some special cases such as the berry picking migration in Scandinavia, the agricultural season workers in Spain and the seasonal Ukrainian workers in some countries of V4. In Section 5 we discuss the abuse of power in the case of season workers and possible measures to control it. Finally in Section 6 we present our conclusions.

COMPARISON OF THE LEGISLATION IN COUNTRIES IN SOME EASTERN EUROPEAN COUNTRIES.

No special authorizations are needed to perform services like an international job intermediation agency, located in a country of the EU or the EFTA under the Bolkestein directive (Directive on services in the internal market) (Bolkstein 1, Bolkstein 2). Especially, in Bulgaria, Romania and Poland, no bank guarantee is required for a job intermediation agency to be opened (BMLSP 2019; RNAL 2011; PLEP 2004). Job intermediation services between EU/EFTA countries and other countries are usually only done through state job agencies with a lengthy application procedures and predefined contingents. As some of the countries in Eastern Europe are not able or do not want to afford the financial support for these agencies, the funding of the job intermediation services has to be done through different channels.

Bulgaria

The law in Bulgaria doesn't allow a job intermediation agency to seek a financial reward directly or indirectly from a person applying for a job abroad. The agency needs to seek financial compensation from the employer according to the law (BMLSP 2019). This creates a situation, where operating a job intermediation agency is not a option because of the lack of any financial support from the state and from the person seeking a job. At the meantime, the competing job agencies from neighboring EU countries like Romania are able to offer to the employer employees for free. Another situation is created where those agencies demand illegal payments. In this case they risk being closed. One result of this policy is the creation of not-registered intermediation agencies or the appearance of people offering this kind of services.

Romania

The law in Romania allows a job intermediation agency to seek a financial payment for a person applying for a job abroad, with the exception of a very few cases (RNAL 2011). The payment should be made before the person goes abroad. It cannot be deducted from the first salary after he or she has started working. If the work for which the person applying has paid for is not available, a refund of the paid money is mandatory according to the law. This gives a big advantage to the intermediation agencies, as they can offer workers for free to the employers.

Poland

The law in Poland for a job intermediation agency is somewhere between the previous cases of Bulgaria and Romania. Although it is not allowed to seek a direct financial payment from a person applying for a job abroad, it is allowed to seek a payment for indirect services, like the translation of the CV, the arranging of transportation or medical checks (PLEP 2004). Usually Polish job intermediation agencies also demand payment from the employers. Because of the incentives to charge the people demanding a job, the Romanian and Polish job intermediation agencies seem to be an important element in the export of unemployment from the respective countries. This situation also contributes to the fact that the Polish and Romanian workers sent abroad have the qualifications demanded by the employers.

THE USUAL DESTINATIONS FOR MIGRATION

When it comes to a destination country of emigration, several factors influence the decision of the potential emigrant. The main factors are (ordered by importance):

1. How much money can be earned and saved when working there;
2. How safe/unsafe the target country is;
3. How easy is it to get a residence permit or a visa in the destination country - or if it is possible to get work illegally;
4. How close the culture of the destination country is to the one of the origin country; Religion plays a key role in this point;
5. If there are family members or friends already in the destination country;
6. How close geographically this country is;
7. The rumors about and image of the destination country;
8. How immigrants are treated in the immigration country.

Inside Europe, there are several different emigration patterns. For example, Lithuanians usually immigrate to northern countries, especially the UK, Ireland and Norway, as both countries have a similar north European culture (EMN 2019). Bulgarians usually immigrate (excluding ethnic migration to Turkey) to Greece, Spain and Italy (Bulgarians abroad 2011), while Romanians to Italy and Spain (National Italian Institute of Statistics, National Spanish Institute of Statistics). After 2014, Ukrainians have mainly immigrated to Poland, but recently the migration pattern has changed towards others Visegrad 4 countries, such as Czech Republic or Slovakia (Jaroszewicz 2018; Drbohlav 2016). The Nordic countries are also becoming a popular destination, usually for seasonal jobs. The factor of collective thinking is an important factor which leads to emigration to a certain country. It has different importance in different cultures as some cultures are more collectivist and some are more

individualist. Policies and education are also very influent factors in the degree of collective thinking. How tight the family relationships are is an additional important factor related to a significant extent to the collective thinking factor. All the factors stated before are self-fuelling ones, as they create more easy conditions for new immigrants. Thus a collective thinking can become an essential one at the beginning of a mass migration to a certain country. A small group becomes a 'leading' one and can trigger a mass migration quite easily within countries with a high degree of collectivist thinking.

CASE STUDIES: THE BERRY PICKING IN SCANDINAVIA, THE AGRICULTURAL WORKERS IN SPAIN AND THE UKRAINIAN WORKERS IN POLAND AND THE COUNTRIES OF V4

A Study of the Laws Regulating the Berry Picking Activity in Sweden

For the berry pickers the collective labor agreement between the Swedish Municipal Workers' Union with the Federation of Swedish Forest and Agricultural Employers applies (Swedish Regulation 2019). However, each summer during the last several years, there have been scandals with workers who have ended with debts in their home country (especially in the case of Thailand) in order to being able to work in Sweden picking berries (Thai berry 2012). Several measures have been taken in Sweden strengthening the procedure to hire people who are not citizens of the European Union, the European Free Economic Area and Switzerland. These measures apply for a work permit in order to hire somebody. The employer has to prove that his or her business has enough funds available and that the business is located in Sweden or another EU country. Unfortunately these measures have not stopped the problems (ILO 2012). When berry pickers arrive to Sweden, several situations can happen (from financially best to worse for the pickers):

1. They travel with a tourist visa, they pick many berries and are able to pay their debts back and save relatively lots of money. A good harvest year is needed. If no intermediation services were used in their country of origin, less debt they have.
2. They are employed with a legal contract and the berry picking business pays them what was agreed, regardless of how good or bad the harvest has been. They travel with a work visa. Most of the times they can pay back their debts and save some money.
3. They are employed with a legal contract, but the berry picking business does not pay them what was agreed or does not pay them at all. They travel with a work visa. Most of the times they need a help in order to return to their home countries and end with debts.
4. They travel with a tourist visa after having it arranged through intermediation services in their country of origin. If after arriving the harvest is bad, they need financial assistance to return to their home country and often loose part or all of their property.

To avoid similar problems, the latest requirements impose that the employer has advertised the position in Sweden and the EU for at least ten days (for new employment). He/she must offer as well a monthly pretax salary of at least SEK 13,000, offers working conditions that are on par with a Swedish Collective Labor agreement or what is normal in the profession or trade and he/she must offer the trade unions in question the opportunity to comment on the employment conditions in the job offer (Info berry pickers, Work permits berry pickers, Work permit regulation).

A new trend has recently started to appear, where people working in a border area between two Scandinavian countries cross the border to pick berries in another country, while they are employed in a country where the labor legislation is more lax and/or salary is lower. This is now the case at the border between Sweden and Finland (Berry pickers Finland, Thai visas).

A Study of the Laws and the Reality of the Season Workers in the Agriculture in the Mediterranean Regions of Spain

In Spain there are two main regions where agricultural season workers are routinely employed: the Levante (the region around Valencia), where they are employed mostly in the orange picking, and Andalucía, where they are mostly employed in the olive harvest or in the greenhouses. Spain is among the countries with a higher officially registered unemployment rate. Spanish unemployment was officially 26,1% in December 2013 and it has slowed down to 14.2% in September 2019, although still being very high, compared to the Europe's average rates. The unemployment rates among the young people are two times (cumulatively) higher than the average.

Officially unemployment rates for immigrants are higher (Eurostat unemployment 2019). Some of them have returned to their origin countries during the financial crisis, but some of them were not able to do it, because they have bought a property with a high mortgage during the period of overvaluation of the housing boom (2004-2007).

The business sector is taking advantage of the desperate situation of those people, imposing on them hard working conditions with very low payment and long working hours. There have been even cases where wages were the same as the Bulgarian minimal wage, while employing season workers directly from Bulgaria had salaries of 15 Euros for a 13 hours working day (El Mundo 2012).

Interviews performed and archived by the author in 2013 in Bulgaria with people willing to emigrate for a seasonal work revealed the following opinions:

M. 28 years old (Woman) I come from a small town, where there are no opportunities, no job. I cannot sustain my family and I have two small children. I wanted to go to Spain to work few months in the agriculture and thus to earn some money.

G. 45 years old (Man) I have heard that in Spain I could find some temporary job in the agriculture sector and even in the construction. In any case it would be better than to stay in my village, where there is nothing.

Nowadays, less Bulgarian workers are looking to work abroad as seasonal workers as the final income they receive is not very higher compared to the income they would obtain working during the summer in the tourist sector or in the construction sector of their own country. In order to understand this phenomenon and the changes during the last few years, we have performed similar to the above interviews also in 2019.

A. 37 years old (Woman) Ten years ago may be I would be interested to go abroad for a seasonal work, but now the situation in Bulgaria is better and I don't have this necessity.

P. (25 years old, male) I come from a small village, where there are no jobs. However, I would prefer to go to the capital instead to change countries, language or legislation.

The Seasonal Ukrainian Workers in Poland and Other V4 Countries

Since January 2018, seasonal work in Poland can be taken up by foreigners for a maximum of 9 months in a calendar year and performed in the following sectors: agriculture, horticulture and tourism. Seasonal work requires a special work permit (type "S" permit). The labor market test is not required if the foreigner is a citizen of Armenia, Belarus, Georgia, Moldova, Russia or Ukraine, or have stayed on the territory of Poland for the period of 3 years preceding the application (Seasonal work Poland 2019).

According to estimates by the Ministry of Social Policy of Ukraine, more than 3 million Ukrainians are permanently abroad, and between 7 and 9 million are seasonal workers, mainly working in the agriculture and construction sectors. Poland is the country receiving most of the Ukrainian labor migrants. There are about 2 million Ukrainians. In 2018, almost 329,000 foreigners obtained work permits in Poland, 70% of them were from Ukraine. Under a visa-free permit, Poland allowed Ukrainians to work for up to 6 months for a year. However, the Polish system favors seasonal migration of unqualified workers and discourages qualified migrants who aspire to live in Poland with their families.

Meantime, Slovakia, the Czech Republic and Germany offer similar visa conditions in order to attract the Ukrainians working in Poland. In the Czech Republic, salary is usually one third higher than in Poland, and in some sectors - even 50% higher. Additionally, Ukrainians are eligible for employment visas for a 90-day-period that can be extended to two years. Both Czech Republic and Slovakia have eased entry regulations for Ukrainians, which further contribute to increase labor migration to these countries (Hryhorenko 2019).

Several interviews, performed by the author in Ukraine in 2018 and 2019 reveal the following opinions:

M. 27 years old (Man): I cannot reach the end of the month with my current job. I want to immigrate to Germany. I have experience in the construction sector and I could work several months and then come back.

A. 35 years old (Woman): I am working in the service sector, but it is hard to maintain the family. I am planning to immigrate to Spain at least for several months as I have relatives working there and they can help me.

THE ABUSE OF POWER IN THE CASE OF SEASONAL WORKERS

Usually in a job market, the incoming immigrants will always be in a disadvantage if they do not speak the local language. Most of the times, depending on the destination country, foreign workers are not hired because they don't speak the language or because they don't speak it well enough (this usually means that they speak it, but with an accent, sometimes impossible to overcome). Quite often the local business owners/managers will pretend not to understand an international language (like English) or the language spoken by the foreign workers. Many times xenophobic politics are promoted by the same politicians who profit from hiring low paid immigrant labor in their businesses. Usually the local people in the destination country start also hating the foreign workers, as wages get usually lower. Little or no hate is directed towards the real promoters of the low paid labor immigration phenomena.

Another solution is to stop hiring foreign workers, which will lead to economic and social hardship in the future, as the economy will not be able to grow and it will collapse due to the lack of children (workers in the near future). This situation can lead to a catastrophic economic meltdown, if it is done suddenly.

A possible way to overcome the majority of these problems could be the application of innovative solutions, such as, for example, the blockchain technology, which has no central authority and hence, anything that is built on the blockchain is by its very nature transparent and everyone involved is accountable for their actions (Tapscott 2016). Its applications are also considered in the context of Passport, Visa and Immigration issues. A transparent procedure will contribute to a better regulation and a higher social acceptance of the seasonal workers phenomenon (Panchamia 2017) as bad practices could become of the knowledge of all the community and thus they will be avoided. Similar promising practices and ongoing challenges has been very recently discussed in (Hooper 2020) and appeared in parallel with the current manuscript.

CONCLUSION

In this paper we have compared several factors for the phenomenon of migration of season workers in Europe. By discussing the laws regulating the intermediation job agencies in Bulgaria, Romania and Poland, we have shown that the legislation about job intermediation agencies is an important contributing factor for the emigration from these countries. It regulates the choice of destination countries, the type of immigrants who are going to migrate and the treatment of the migrants during the stay in the destination country.

Typical examples of season works have been analyzed through the paper: the berry picking in Scandinavia, the agricultural work in the Mediterranean regions of Spain and the Ukrainian workers in Poland and the rest of the Visegrad 4 countries. It has been shown that it is a usual practice that the employer does not respect the general bargain agreement, which often leads to degrading working conditions and forced labor practices.

The analysis of the common characteristics of the job intermediation agencies showed that quite often job intermediation agencies make relatively big profits by charging people with additional expenses for intermediation services. It is not rare that some job intermediation agencies make false promises about the job conditions, but avoid prosecution due to the fact that the workers do not complain to the authorities.

Finally we discussed the usual abuse of the season workers due to the lack of knowledge from the part of the season workers of the laws protecting them. We also discussed the systematic lack of knowledge about the local language and customs of the country, the hostile attitude (in several cases) of the local population, and to some extend the politics that identify the reasons for the existing problem with 'the foreigners'. A novel approach is suggested for overcome the above mentioned problems based on blockchain technology as a reliable way to control the migration processes and their social acceptance.

The author is aware that the above picture might change drastically due to the COVID-19 pandemic and that the shortage of seasonal workers in a short and medium time scale, due to the social confinement, will be crucial for the World economy. 

REFERENCES

1. Agricultural labour management - University of California http://www.cnr.berkeley.edu/ucce50/ag-labor/
2. Aparicio, R. et al., (2008): Combating illegal employment of foreigners in Spain: scale and reasons behind the phenomenon; laws and policies against, in: M. Kupiszewski and H. Mattila (Eds), Addressing the Irregular Employment of Immigrants in theEuropean Union: Between Sanctions and Rights, pp. 251–296.
3. Arango, J. et al., (2009): The making of an immigration model: inflows, impacts and policies in Southern Europe, Working Paper No. 9, IDEA Project.
4. Bade, K., (2008): Migration in European History, Blackwell Publishing.
5. Berry pickers' shortage after Thai trafficking case (2019) https://www.freshplaza.com/article/9135575/finland-berry-pickers-shortage-after-thai-trafficking-case/
6. Bieniecki, M. and Pawlak, M., (2009): Strategie przetwania. Adaptacja ukrainskich migrantow zarobkowych do polskiej rzeczywistosci instytucjonalnej, Instytut Spraw Publicznych (ISP), Warszawa.
7. Official site of the Bulgarian Ministry of Labour and Social Policy: Intermediate Enterprises https://www.az.government.bg/portal/
8. Bolkstein Directive (Directive on services in the internal market) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0123:EN:NOT
9. Bolkestein Directive - an insight analysis https://www.lexology.com/library/detail.aspx?g=6f996e2d-078f-4e7d-9afc-1d681752dc5a
10. Statistics about the Bulgarians abroad (2011) http://upload.wikimedia.org/wikipedia/commons/2/25/MVnR_Spravka_bulgari_v_chujbina.pdf
11. Dawney, L., (2008): Racialisation of central and east European migrants in Herefordshire Sussex Centre for Migration Research, Working Paper No 53, pp. 1-17.
12. Dietz, B., (2002): East west migration patterns in an enlarging Europe: The German case, Journal Global Review of Ethnopolitics, Volume 2 (1), pp. 29-43.
13. Drbohlav, D. and Jaroszewicz, M., Eds., (2016): Ukrainian Migration in Times of Crisis: Forced and Labour Mobility, (Chapter 4 for the case of Slovakia), Charles University, Faculty of Science https://www.osw.waw.pl/sites/default/files/projekty/ukrainian_migration_in_time_of_crisis.pdf
14. El Mundo, 13 hours for 15 euros, 22.02.2012 http://www.elmundo.es/elmundo/2012/02/22/andalucia/1329928350.html

15. European Migration Network https://123.emn.lt/en/#-migration-trends
16. EUROSTAT, unemployment rate https://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics
17. Gertel, J. and Sippel, S. R., (Eds.), (2014): Seasonal workers in Mediterranean agriculture: The social costs of eating fresh, Routledge, New York.
18. Hooper, L. and le Coz, C., (2020): Seasonal Worker Programmes in Europe: Promising practices and ongoing challenges, MPI Policy Briefs, February 2020 https://www.migrationpolicy.org/research/seasonal-worker-program
19. Hryhorenko, Y., (2019): Labor loss: How neighboring countries attract Ukrainian workers? https://112.international/article/labor-loss-how-neighboring-countries-attract-ukrainian-workers-40324.html
20. A Case Study of Thai migrant workers exploited in Sweden https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_182264.pdf
21. Information for foreign berry pickers https://www.av.se/globalassets/filer/publikationer/broschyrer/english/information-for-foreign-berry-pickers-adi653eng.pdf
22. Jaroszewicz, M., (2018): Migration from Ukraine to Poland - the trend stabilizes, OSW report of Center of Eastern Studies, https://www.osw.waw.pl/sites/default/files/Report_Migration%20from%20Ukraine_net.pdf
23. Maroukis, T., IglickaK. and Gmaj, K., (2011): Irregular Migration and Informal Economy in Southern and Central-Eastern Europe: Breaking the Vicious Cycle? Int. Migration, pp. 129-156, doi:10.1111/j.1468-2435.2011.00709.x
24. National Italian Institute of Statistics: Demographic Indicators https://knoema.es/atlas/sources/ISTAT
25. National Spanish Institute of Statistics: Demographics https://www.ine.es
26. Panchamia, P. et al., (2017): Passport, VISA and Immigration Management Blockchain, in the Proceedings of the 23rd Annual International Conference in Advanced Computing and Communications, DOI: 10.1109/ADCOM.2017.00009 https://ieeexplore.ieee.org/document/8691939
27. Polish law on employment promotion and labour market institutions https://www.global-regulation.com/translation/poland/3353898/act-of-20-april-2004-on-employment-promotion-and-labour-market-institutions.html
28. Power, J., (2014), Migrant Workers in Western Europe and the United States, Pergamon.

29. Official site of the Romanian National Agency of Labour http://www.anofm.ro/medierea-muncii-actualizat-la-28-03-2011
30. Rye, J. F. and Andrzejewska, J., (2010): The structural disempowerment of Eastern European migrant farm workers in Norwegian agriculture, Journal of Rural Studies, Volume 26 (1), pp. 41-51.
31. Seasonal work in Poland https://www.careersinpoland.com/article/arrival-and-stay/seasonal-work-in-poland
32. Work permit for seasonal workers https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Employed/Special-rules-for-certain-occupations-and-citizens-of-certain-countries/Seasonal-work.html
33. Tapscott D. and Tapscott A., (2016): Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World, Portfolio Publ. ISBN-10: 1101980141 ISBN-13: 9781101980149.
34. A report on The on-going stuggle of Thai berry pickers in Sweden, 04.03.2012 http://issuu.com/workazine/docs/a-report-on-the-on-going-struggle-of-thai-berry-pi
35. Thai officials hold back on visas for berry pickers https://yle.fi/uutiset/osasto/news/thai_officials_hold_back_on_visas_for_berry_pickers/10861443
36. Work permits for berry pickers https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/Employed/Special-rules-for-certain-occupations-and-citizens-of-certain-countries/Berry-pickers.html
37. Work Permit Regulations for Fruit Pickers in Sweden https://www.workinfinland.com/work-permit-regulations-for-fruit-pickers-in-sweden/#.XhScV_ykHIU

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THE EVALUATION OF RUSSIA'S FOREIGN POLICY TOWARDS GEORGIA FOLLOWING THE 'ROSE REVOLUTION'

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Abstract: *For more than twenty-eight years, following the disintegration of the Soviet Union, Russian-Georgian relations have been a substantial ground for mutual confrontation, sharp dispute, and a lack of trust. Continuous tensions and disagreements have adversely affected efforts to achieve a proper balance in bilateral relations between the neighboring countries and resulted in a number of direct and indirect confrontations. Whilst the Russian president seeks to restore Russia's great power status, regain its past glory and control strategically important regions of the former Soviet space, Georgia, from the very first day of independence, tries to maintain its sovereignty and territorial integrity, develop modern state institutions, strengthen democratic values and integrate into the Euro-Atlantic structures. The paper aims to study Moscow's current foreign policy strategy towards Georgia following the 'Rose revolution' and argues that Russia's military intervention in Georgia, in August 2008, was a clear illustration of classical realism used by a great power in the XXI century. Russia actively uses hybrid warfare and regularly employs economic leverage on Georgia to eventually achieve its political ends in the Caucasus region.*

Keywords: *Russia; Georgia; Occupation; Creeping Annexation; Economy*

INTRODUCTION

The disintegration of the USSR (the Union of Soviet Socialist Republics) marked the end of geopolitical tension between the two greatest superpowers of the so-called 'Cold War' the Soviet Union and the United States whose mutual antagonism lasted for almost forty-five years following the immediate afterward of the end of the World War II. The World watched in shocked amazement how the Union of fifteen socially, culturally and ethnically diverse groups of states fell to pieces in 1991. Francis Fukuyama (1989) argued that a triumph of capitalism over socialism after the failure of Communism meant the victory of liberal-democracy, which would become the last point of socio-cultural evaluation of the society and final form of human government.

During the early years of independence, weak and socially unstable former USSR nations faced a number of internal and external challenges to maintain their freedom and national identity. Georgia was not an exception; the country with little experience of independence was confronted with the issue of reestablishing its prospective place on the world stage and redefining a right strategic orientation to the road to democracy and sovereignty. The Supreme Council of Georgia declared independence from the Soviet Union on April 9, 1991. The mentioned period coincided with severe ethno-political tensions in Georgia's two separatist regions: Abkhazia and South Ossetia/Tskhinvali Region (Rondeli 2001). The civil war ended with expelling the first President of Georgia, Zviad Gamsakhurdia from his homeland and undermined the power of the legitimate government of the country. The war drastically weakened Georgia's economic development and eventually resulted in the so-called unresolved 'frozen conflicts'. Despite the frequent meetings between Eduard Shevardnadze and Boris Yeltsin in the 1990s over the peaceful resolution of the Georgian conflicts, the negotiations appeared to be pointless since they inevitably ended in deadlock.

At the beginning of a new millennium, young charismatic leaders came to power in Georgian and Russian political elites, which in turn, hugely deteriorated Russian-Georgian relations over again. Since under Saakashvili, Georgia took an obvious pro-Western and anti-Russian orientation and the president became confident in achieving his political goals concerning the NATO, the EU, and the US, shortly afterward it became certainly clear that Russia would lose its 'sphere of influence' in the Caucasus Region and Tbilisi-Moscow would no more enjoy Shevardnadze-Yeltsin 'honeymoon'. The conflict between the neighboring countries was inevitable (Stent 2015; Sikharulidze 2014).

Saakashvili-Putin clashes of interest over Abkhazia and South Ossetia, Georgia's aspiration towards Euro-Atlantic structures (the EU and the NATO), and the 'pipeline policy' of Georgia eventually resulted in the Russian-Georgian war in August 2008, which brought the relations between the two countries to the lowest point following the disintegration of the Soviet Union.

Power change in Georgia in 2012 marked significant improvements in Russian-Georgian relations. The new government, under the coalition of 'Georgian dream', carried out a more pragmatic policy towards Moscow aimed at repairing the damaged ties with Russia by improving the mistakes made by the cabinet of Michail Saakashvili. Subsequently, after the GID (Geneva International discussions), the so-called Abashidze-Karasin negotiation format was established in Prague in 2012 as an informal channel for discussing trade and humanitarian issues between the two countries.

However, since 2009 Russia has been pursuing the policy of the so-called 'creeping annexation' in the occupied regions of Georgia. Currently, 20% of Georgia's internationally recognized territories are under Russian military occupation. The Russian-baked separatist forces continuously install and erect barbed-wire border posts in one of the occupied regions of Georgia- South Ossetia/Tskhinvali Region and detain Georgian people under the pretext of 'illegally crossing the border'. Fundamental rights of the local population are violated daily since the occupants install barbers through people's houses, gardens and cultivated lands (Modebadze and Kozgambayeva 2019). Thus, Russia's war in Georgia in August 2008 was a clear illustration of the theory of realism, according to which morality is never acceptable in international relations since powerful states show constant desire and continuous necessity to engage in war to defend their national interests, ensure the security or simply demonstrate the power. On February 10, 2007, at the Munich Security Conference, Russian leader Vladimir Putin stated that Russia had a real ambition to re-enter the world politics as a superpower and NATO's plans for expansion directly opposed the mentioned (President of Russia 2007). On December 3, 2019, Russian President Vladimir Putin again criticized NATO's expansion, called the function of the organization 'pointless' following the disintegration of the USSR. "NATO expansion posed a threat to Russia", declared Putin (The Moscow Times 2019).

The Russian Federation, which still remains a complex phenomenon among the world's biggest political players, vigorously neglected internationally recognized norms and principles of the 'Just War Theory' and violated the 2/1, 2/4, 2/7 articles of the UN. According to article 2/4 of the UN "All members shall refrain in their international relations from the threat of use of force against the territorial integrity of political independence of any state, or any other manner inconsistent with the purposes of the United Nations". "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under chapter VII"- is clearly highlighted in the Article 2/7 of the UN (United Nations 1945).

RUSSIA'S FOREIGN POLICY TOWARDS GEORGIA FOLLOWING THE 'ROSE REVOLUTION'

Putin's rise to power coincided with the so-called 'color revolutions' in post-Soviet space, such as the 'Rose revolution' in Georgia and the 'Orange revolution' in Ukraine. Both countries aspire to strengthen ties with western Institutions and reduce the dependence on Russia. While American-educated, Charismatic leader, Mikhail Saakashvili sought Georgia's sovereign independence, territorial integrity, and Euro-Atlantic orientation one of the fundamental priorities for the country's long-term development (Pkhaladze and Silaev 2011; Stent 2015, 106; Bedianashvili 2013a; Bedianashvili, Gogiashvili and Pavliasvili, 2016), On the other side of the globe, Vladimir Putin entered Russian politics with a strong determination to reverse the humiliating decade of the 1990s, recreate strong Russian statehood and restore its role as a Great Power. Some were quick to make a parallel between the foreign policy of Putin to the one of Joseph Stalin (Sikharulidze 2014, 114).

Mikhail Saakashvili developed closer ties with the NATO since October 29, 2004, through the IPAP (Individual Partnership Action Plan), according to which Georgia modified its political, security and defense system in accordance with the NATO standards. Further positive steps had been taken in September 2006, when the NATO-Georgia commission was established and Georgia was given a real opportunity to engage in an active dialogue with the NATO (North Atlantic Treaty Organisation, 2019). Initially, the NATO-Georgia relations started in 1992, shortly after Georgia regained independence from the Soviet Union. Georgia joined the North Atlantic Cooperation Council in 1992, whilst the NATO-Georgia bilateral cooperation began in 1994 when Georgia joined the partnership for peace program. Mutual relations were deepened in 2003, following the 'Rose revolution' when Saakashvili "pushed for more ambitious reforms with the NATO" (North Atlantic Treaty Organisation 2019). In the national security concept of Georgia adopted on May 30, 2005, the following was highlighted:

> Georgia as the Black Sea and South-Eastern European state has historically been a geographic, political and cultural part of Europe. Therefore, integration into European and Euro-Atlantic political, economic and security systems is the firm will of Georgian people. Georgia welcomes the NATO and the EU enlargement and believes that integration of the Black Sea states into the NATO and the EU will significantly reinforce the security of the Black Sea Region as the South-Eastern border of Europe. Integration to the NATO and the EU represents a top priority of Georgian foreign and security policy (Ministry of the Foreign Affairs of Georgia 2020).

In response to Saakashvili's foreign policy strategy, Russia initiated a full-scale economic blockade against Tbilisi. In December 2005, Russia banned Georgian products,

including fruits and vegetables to the Russian market under the alleged reason of 'violating the standards of microbiological composition', whilst a year later, in March 2006, Moscow banned wine imports from Georgia, which, in turn, negatively affected Georgia's economy. The Russian embargo caused the economic collapse in Georgia since Russia has been Georgia's strongest trade partner and it was practically impossible for the country to replace the Russian market into the other potential one in the region (see: Table 1).

Table 1: Chronology of Sanctions by Russia
(Source: Ministry of Economy and Sustainable Development of Georgia)

Date	Event
December 19, 2005	Ban on imports of agricultural products from Georgia
January, 2006	Sharp increase in the price of gas imported from Russia
March 15, 2006	Ban on import of Georgian wine, wine products, brandy and champagne
May, 5, 2006	Ban on imports of Georgian mineral water
July 8, 2006	Georgian-Russian border checkpoint at Verkhniy Lars closed
September 27, 2006	Arrest of Russian officers by Georgian authorities
September 28, 2006	Russia recalled its ambassador in Georgia, and began a partial evacuation of Russian diplomatic staff from Georgia
October 3, 2006	Russia suspended air, rail, road, sea and postal links to Georgia, and stopped issuing entry visas to Georgian citizens
January 2007	Another sharp increase in the price of gas imported from Russia

Saakashvili's pro-western and anti-Russian stance sparked furious reactions in Russia. In addition, Georgia's pipeline projects further increased the tension between Tbilisi and Moscow. As a result of the projects such as Baku-Tbilisi-Ceyhan, Baku-Tbilisi-Erzurum, Nabucco, Traceca, White Stream, etc., Georgia has become an important transport hub and an essential component of Europe's energy security.

The mentioned appeared to be inconsistent with Russia's national interest and its long-term objectives in the South Caucasus region (Pkhaladze and Silaev 2011, 12). At the Munich conference held on February 10, 2007, in Germany, Vladimir Putin strictly criticized the US foreign policy and the NATO's Eastern enlargement:

> I think it is obvious that NATO expansion does not have any relation with the modernization of the alliance itself or with ensuring security in Europe. On the contrary, it represents a serious provocation that reduces the level of mutual trust. And we have the right to ask: against whom is this expansion intended? And what happened to the assurances our western partners made after the dissolution of the Warsaw Pact? Where are those declarations today? No one even remembers them (President of Russia 2007).

As a consequence of several diplomatic meetings, during the NATO summit, held in Bucharest, in April 2008, the US supported giving the MAP (Membership Action Plan) to Georgia and Ukraine. The fact caused furious reactions in Moscow even the MAP did not guarantee the countries acceptance in the Organization (NATO 1949). At the summit, Putin declared that the deployment of a powerful military bloc at Russia's borders, whose members guide their actions by Article 5 of the Washington agreement, would be perceived by Russia as a direct threat to its national security.

On August 8, 2008, when the world's attention was focused on the opening ceremony of the Olympic Games in Beijing, Russian tanks rolled across the border into the Republic of Georgia following the months of violent instabilities between the Georgian and South Ossetian secessionist forces in one of the separatist regions of Georgia South Ossetia/Tskhinvali region (King 2008, 1-2). The Russian-Georgian war in August 2008 ended with the recognition of Abkhazia and South Ossetia as independent states by Russia. The war resulted in hundreds of dead humans and brought innumerable damages to Georgian economy. Thousands of refugees were forced to leave their homeland. Russian air forces bombed and destroyed Georgian air and naval bases, apartment buildings, Baku-Tbilisi-Ceyhan oil pipeline, etc. (Jodjua 2010).

Western media was quick to draw a parallel between the political events of 1938-1968 and Russia's War in Georgia. More concretely, when Adolf Hitler invaded Sudetenland and Leonid Brezhnev intervened militarily in former Czechoslovakia. As Highlighted by King (2008), unlike the historic events of 1938 and 1968, in 2008 "older and more typically Russian patterns were at work". In August 2008, Russian President, Dmitry Medvedev signed a document according to which Russia officially recognized Abkhazia and South Ossetia as independent states. The US swiftly responded to the fact. As stated by Bush "The territorial integrity and borders of Georgia must be respected, just as those of Russia or any other country. Russia's action only exacerbates tensions and complicates diplomatic negotiations. In accordance with United Nations Security Council Resolutions that remain in force, Abkhazia

and South Ossetia are within the internationally recognized borders of Georgia, and they must remain so" (The White House 2008). As argued by Popescu

> (…) the paradox is that until August 2008, Abkhazia and South Ossetia had been unrecognized but *de facto* independent states. In August 2008, after the war, they were partially recognized, although, in reality, both regions cannot be considered more independent than they were before. If the separatist war [of the early 1990s] was their 'war for independence', the war in August 2008 is the war that puts an end their limited yet '*de facto* independence'. The winner of the war was Russia and not the separatist movements. Both Abkhazia and South Ossetia are speedily transforming from 'virtually independent states' into territorial entitles of the Russian Federation (Haindrava 2011, 116).

Although the two contradictory narratives have been created about which side started the war, on the other hand, it appeared to be certainly clear that 2008 events have been an impressive hard power exhibition of Russia. Moscow showed the rest of the world that it still considers Georgia 'a sphere of its influence' and it still maintains its role as a great power among the world's biggest global players. Russian-Georgian war in 2008 led the Russian-Georgian relations to the lowest point. The five-day-war has clearly demonstrated that the Eurasian continent is still facing serious security dilemmas in the twenty-first century. On August 29, in response to Medvedev's recognition of the breakaway regions of Georgia as independent states, Georgia cut diplomatic relations with Russia. A year later, in 2009 Georgia withdrew from the CIS (Commonwealth of Independent States). From 2008 until 2012 all forms of diplomatic relations between Russia and Georgia were terminated.

RUSSIA'S 'CREEPING ANNEXATION' OF GEORGIAN TERRITORIES AND ITS ECONOMICPRESSUREON GEORGIA AS A FORM OF PUNISHMENT

Following the Russian-Georgian war Georgia experienced a deep economic and financial crisis. Tbilisi ceased diplomatic relations with Moscow and Russia's market for Georgia had closed. Yet in 2005-2007 the Russian embargo on major Georgian products, including wine and mineral water resulted in the economic downturn in the country, since after Turkey, Russia has been and remains the second-largest importer of Georgian products near abroad. Moreover, visa restrictions and oppressions on Georgian labor migrants in Russia further sharpened the mutual relations between Tbilisi and Moscow.

Russian-Georgian relations underwent drastic changes under the political coalition of the 'Georgian dream', which won the 2012 parliamentary elections. The new government carried out a more pragmatic policy towards Moscow. One of the main objectives of the newly elected government of Georgia became to separate political and economic issues between the two countries and improve economic relations with Moscow.

Bidzina Ivanishvili would repeatedly argue that improved relations with Russia did not conflict with Georgia's aspirations towards the Euro-Atlantic structures. "Ones, who want the closure of Russian market, are Georgian enemies", insisted Ivanishvili (Interpress News 2019).

In November 2012, an experienced Georgian career diplomat who had earlier served as Georgia's ambassador in Moscow, Zurab Abashidze, was appointed a special representative of Bidzina Ivanishvili for mutual negotiations with Moscow to restore broke diplomatic ties with Russia following the Russian-Georgian war. The format initiated a discussion on 'humanitarian, trade and economic issues, but also security issues facing both Georgia and Russia-terrorism and arms trafficking'. The mentioned marked the beginning of the so-called "Abashidze-Karasin format" (Agenda.ge 2018). As a consequence of frequent meetings between Zuran Abashidze and Grigory Karasin, Moscow gradually reopened trade ties with Georgia which in turn, made a positive impact on the Georgian economy. Moreover, the state Duma welcomed Russian tourists to visit Georgia and recommended Georgian resorts (see: Figure 1).

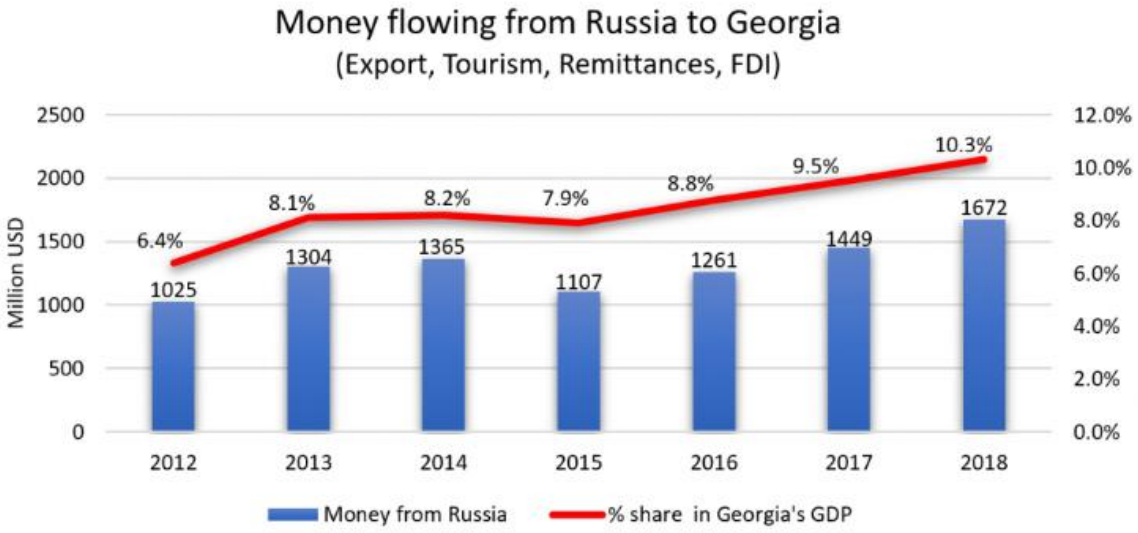

Figure 1: Money Flowing from Russia to Georgia (Source: The National Statistics Office of Georgia 2019).

According to the National Statistics Center of Georgia, the export of Georgian wine and mineral water to the Russian market in 2013 increased by 315% in comparison to 2012, while the imports had improved by 24% compared to 2012. The economic profit gained from the Russian market has increased in the following years as well. Russian-Georgian bilateral trade has improved by 17% in 2016, while in 2017 Georgian wine exports to Russia grew by 86% (amounted 23.740.750 bottles of wine), which has further increased in numbers in 2018. As published by Georgian national wine agency, from 2013 to 2018, after China, Russia was the second-largest importer of Georgian wine (see: Figure 2).

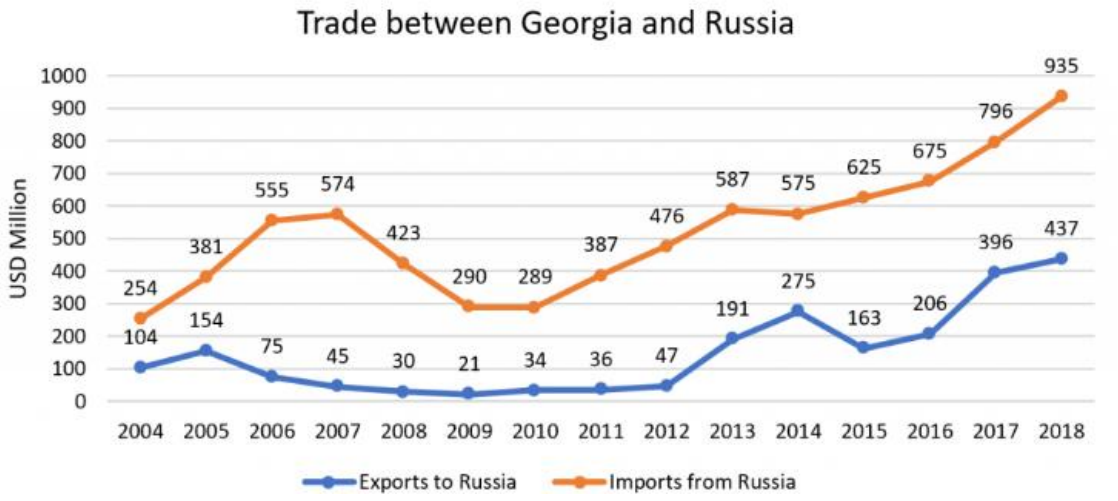

Figure 2: Trade between Georgia and Russia (Source: National Statistics Office of Georgia 2019).

According to the National Tourism Agency of Georgia, more than 1.6 million Russian tourists visited Georgia in 2018 out of which each Russian tourist spent approximately 510 US dollars while their stays in the country (see: Figure 3).

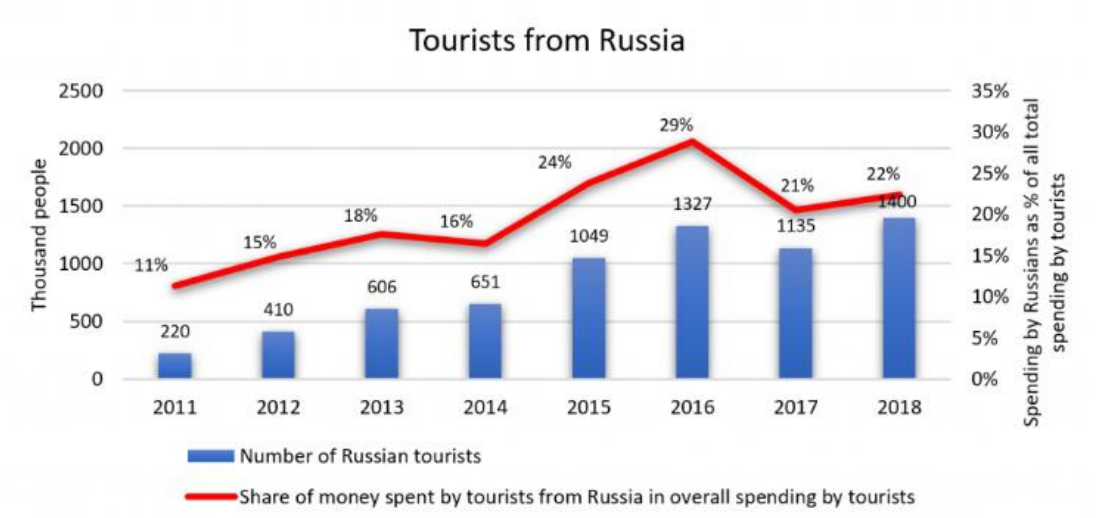

Figure 3: Tourists from Russia (Source: National tourism administration of Georgia 2019).

Russia is the third-largest immigrant population country in the world after the US and Germany. According to the State Ministry for Diaspora issues of Georgia, based on 2015 statistics, the total number of Georgians living abroad amounted to 1.607.754 people, among whom almost 800.000 Georgians living in the Russian Federation.

According to the statistical data, published by the National Bank of Georgia, almost half of the total amount of money transferred to Georgia in 2012-2018 came from Russia (see: Figure 4).

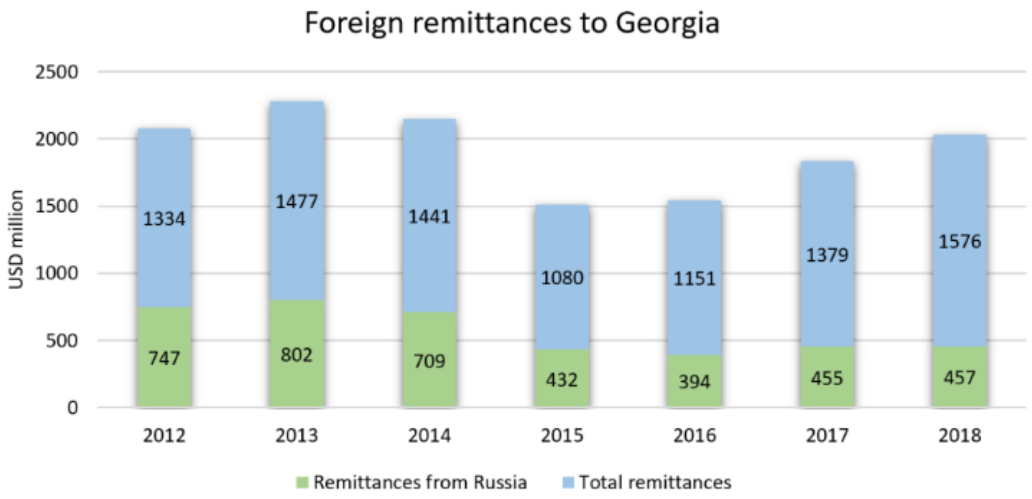

Figure 4: Foreign Remittances to Georgia (Source: National Bank of Georgia 2019)

Even Russian-Georgian relations considerably improved in 2012-2018, Russia's 'creeping annexation' of Georgian territories has remained one of the major challenges in the relations between the two countries. Russia still opposes Georgia's Euro-Atlantic integration and interferes with the territorial integrity of the country. In 2012, after the power shift in Georgia, Russia's ambassador to the NATO, Alexander Grushko stated: "As far as Georgia is concerned, I am sure that NATO understands the seriousness of consequences that any step towards further engagement of Georgia with the alliance, Russia-NATO relations and European Security" (Civil.ge 2012).

Georgia is the NATO's one of the closest partners. The country actively contributes to the NATO-led operations worldwide. Following the Russian-Georgian war, the NATO continues to support Georgia's territorial integrity and sovereignty within its internationally recognized borders and calls on Russia to reverse its recognition of Abkhazia and South Ossetia as independent states. Currently, Georgia provides valued support for the NATO-led operations in Afghanistan (Chitadze 2011b).

Since 2009, Russia has increased the military forces in Abkhazia and South Ossetia and pursued the policy of 'creeping annexation' in the occupied territories of Georgia. Currently, 20% of Georgian territories are occupied by the Russian Federation. Russian-baked separatists further move the state border near the Georgian-controlled villages daily. People are forced to leave their homes, belongings and cultivated lands that are beyond the

occupants' demarcation lines. Clear illustrations of Russia's oppressive policy are Georgian citizens: Giga Otkhozoria, Archil Tatunashavili, and Irakli Kvaratskhelia who were killed by the Russian regime in the occupied regions of Georgia. The international community, including EU, NATO and US vigorously condemns Russia's 'creeping annexation' in Georgia and call on Russia to stop the occupation of a sovereign country and respect the fundamental rights of the local civilian population.

The 2019 anti-government protests in Georgia, also known as 'Gavrilov's night' hit a new law point to Russian-Georgian relations and once again demonstrated Russia's well-defined foreign policy strategy in Georgia. Mass protests in Tbilisi began on June 20, when Sergey Gavrilov, a member of the Communist Party of Russian Duma visited Georgia to participate in Inter-Parliamentary Assembly on Orthodoxy. Sergey Gavrilov occupied the Georgian Parliamentary speaker's chair and delivered a speech in which he enthusiastically praised the brotherhood of Georgian and Russian people under the same religious-Orthodox Christianity. His speech sparked mass protests in front of the Parliament of Georgia. The protests demanded the government's resignation with placards: 'Russia is an occupier'.

Georgian President, Salome Zurabishvili declared that 'Russia is an enemy and occupier'. Zurabishvili directly suspected the Kremlin of helping in 'stirring the unrest' in Georgia. As the Prime Minister of Russia Dmitry Medvedev stated, Zurabishvili's claim was a 'distortion of reality' (National Post 2019). In response to anti-Russian protests in Tbilisi, which Russia viewed as 'radical Russophobia', Putin temporarily suspended direct flights between Russia and Georgia, which came into force on July 8 (REUTERS 2019).

On July 6, Georgian opposition TV host Giorgi Gabunia in his live news show 'Postcriptum' used highly offensive language towards the President of Russia. He insulted Putin's late parents. Georgian government promptly reacted to the event. Georgia's Prime Minister condemned Gabunia's vulgar rant, and noted: "This is a war by provocateurs against their country, a dirty and disgusting game with the security of the state and citizens. (...) He [Gabunia] has allowed himself something that is unacceptable for Georgia! This is called damaging the interests of one's state!" posted Salome Zurabishvili on her Facebook page.

Gabunia's statement caused furious reactions in the State Duma. Top Russian officials supported the idea of closing the Russian market for Georgia, by banning the imports of Georgian wine and mineral water to the Russian market, as well as banning the remittances between the two countries. However, Vladimir Putin opposed the economic sanctions against Georgia. "I would not do that out of respect for the Georgian people", stated the President of Russia (First Channel 2019). Furthermore, Russian foreign policy strategy has undergone significant transformation in recent years by strengthening a soft power in Georgia which in turn, is shaped with Kremlin's powerful propaganda. Since the methods and tools used by the Russian media are becoming more and more refined and sophisticated in the XXI century compared to propaganda used by the Soviet Union, it is one of the effective mechanisms for Kremlin to widely spread disinformation and promote pro-Russian and anti-Western rhetoric.

CONCLUSION

The evaluation of Russia's foreign policy towards Georgia clearly shows that the Kremlin continuously employs political and economic leverage on Georgia to achieve its policy goals in the region. Russia actively uses complex tools and methods to spread anti-Western and pro-Russian rhetoric across wider society, and undermines Georgia's Euro-Atlantic aspirations. Moscow, directly and indirectly, influences Georgian political actors, church, and media and occupies 20% of Georgian territories. Furthermore, Russian-baked separatists erect barbed wire fences along the administrative border of the occupied regions and detain Georgian people. Paradoxically enough, Russia's foreign policy towards Georgia has never been straightforward. Following the disintegration of the USSR, every new attempt of Georgia to improve the relationship with its Northern neighbor failed due to Russia's imperial approach towards Tbilisi, which simply demonstrates its 'divide and conquer' strategy in the former Soviet space.

The paper argued that Russia's military intervention in Georgia (August 2008) was a clear illustration of classical realism, that is, the hard power exhibition of Moscow. It was a direct message to Washington that Russia still maintains its role as a great power among the world's dominant political actors and still applies 'the rule of the jungle' to defend its 'national interests'.

From another standpoint, following the war, Russian-Georgian relations remained rather strained, filled with mutual suspicion and a lack of trust. Yet, before the war, Russian embargo on Georgian products in 2006 adversely affected the Georgian economy since after Turkey; Russia has been and remains the second-largest importer of Georgian products near abroad. Russian embargo, on the other side, triggered strong debates among the economic experts in Georgia that the Russian market would no more bea solid foothold for Georgian business in the long run. However, it appeared to be practically impossible for Georgia to replace the Russian market by a potential alternative in the region, due to several reasons, such as: high demands for Georgian products (especially wine and mineral water) in Russia; historical proximity and long-established trade ties between the two countries; and shared culture and religious beliefs that are still deeply embedded in the perception of many Russian and Georgian people, particularly the old generation who have lived and grown up in the Soviet Union.

Furthermore, Russian foreign policy strategy has undergone significant transformation in recent years by strengthening a soft power in Georgia which, in turn, is shaped with Kremlin's powerful propaganda. Since the methods and tools used by the Russian media are becoming more and more refined and sophisticated in the twenty-first century compared to propaganda used by the Soviet Union, it is one of the effective mechanisms for Kremlin to widely spread disinformation and promote pro-Russian and anti-Western rhetoric.

In Georgia, Russia actively manipulates with the following major instruments of hybrid warfare: 'creeping occupation' and *de facto* regimes; soft power through propaganda; information war; and covert operations. Thus, Moscow frequently employs a combination of hard power and soft power to achieve its political ends in the South Caucasus and uses economic pressure as a 'punishment' of Georgian people for their 'misbehavior'. As long as Russia's creeping annexation of Georgian territories and its political and economic pressure on Georgia continue, it is highly unlikely Kremlin to change the course towards Tbilisi in the foreseeable future.

It should definitely be emphasized that 'creeping annexation' is not only an act of illegal occupation of Georgian territories, Russia, on the one hand, aims at weakening Georgia's economy, and on the other hand, tries to increase the dependence of Georgian export on the Russian market. Furthermore, Russia interferes with Georgia's Euro-Atlantic integration and diminishes the status of the country on an international stage by showing the rest of the world that Georgia is unable to independently carry out its political course without the support of Moscow.

Under the current tense political relations between Russia and Georgia, it becomes certainly clear that the more Georgia increases its ties with the US, the NATO, and the EU, the more unpredictable Russia's reactions could be in the region, in response. For instance, with this scenario, Russia is expected to strengthen pro-Russian forces in Georgia, create political instability in the country and undermines its democratic development; or with another scenario, Moscow is expected to again impose economic sanctions on Georgia. Tbilisi should better prepare for that.

In light of Russia's current foreign policy towards Georgia, there is no reason to believe that there will be positive changes in Russian-Georgian relations in the near future. It is difficult to foresee a positive dynamic for the peaceful resolution of the Georgian conflicts as well. From the mentioned perspective, Georgia should further strengthen its ties and increase strategic partnerships with the West and Europe to stand firm against the threats coming from Russia.

In the economic context, the Georgian government should first and foremost take all the possible measures to reduce the economic dependence on Russia and furthermore, work to diversify Georgian exports abroad. Currently, Georgia has a free trade agreement with the EU and China which, in this regard, represents a huge success for the country. 

REFERENCES

1. A little war that shook the world: Georgia, Russia, and the future of the West New York St. Martin's Press 2010.
2. Agenda ge. Autopsy carried out of Georgian man who died in unclear circumstances in occupied Abkhazia, December 8, Tbilisi, Georgia. Available https://agenda.ge/en/news/2019/704
3. Agenda,ge. ArchilTatunashvili, Georgian brutally killed by occupying forces, would have turned 36 today, April 2,Tbilisi, Georgia https://agenda.ge/en/news/2019/916
4. Agenda.ge. Famous doctor illegally detained by occupation forces sent to pretrial detentionhttps://agenda.ge/en/news/2019/3095.
5. Agenda.ge. Georgia-Russia to "move forward" in implementation of the agreement on customs monitoring. May 24, 2018. https://agenda.ge/en/news/2018/1111 (accessed December 5, 2019).
6. BBC news. Russia suspends Georgia flights after violent clashes, June 22 https://www.bbc.com/news/world-europe-48727133
7. Civil ge. Archives: Georgia's Chaotic Memory https://civil.ge/archives/278155/312296
8. Government Decries 'Provocation', Protesters Gather, as Rustavi 2 TV Anchor Insults Putin. Channel Off Air Citing Threats, July 8, 2019 https://civil.ge/archives/312296
9. Russian Diplomat on Georgia's NATO Integration https://civil.ge/archives/186565
10. Civil,ge.Archill Tutanasvili https://civil.ge/archives/tag/archil-tatunashvili
11. Civil.ge. November 30, 2012. https://civil.ge/archives/186565 (accessed March 30, 2020).
12. Civil.ge. Archil Tatunashvili https://civil.ge/archives/tag/archil-tatunashvili
13. Democracy and Fredoom Watch.Demoracy and Freedom Watch. Georgia and Russia to meet in Prague in mid September https://dfwatch.net/georgia-and-russia-to-meet-in-prague-in-mid-september-77510-22500
14. Democracy and Freedom Watch. Democracy and Freedom Watch, Russian Duma member evacuated from Tbilisi hotel amid angry protests after he presides over debate in Georgia's parliament building https://dfwatch.net/russian-duma-member-evacuated-from-tbilisi-hotel-amid-angry-protests-53476
15. —. Georgia and Russia to meet in Prague in mid September. September 4, 2019 c. https://dfwatch.net/georgia-and-russia-to-meet-in-prague-in-mid-september-77510-22500 (accessed September 4, 2019).
16. Discussion at the Munich Conference on Security Policy Speech and the Following Discussion at the Munich Confference http://en.kremlin.ru/events/president/transcripts/24034
17. European Integration and Institutional Aspects of Competition Globalization & Business Globalization & Business 2016.

18. First Channel First Channel ,Vladimir Putin says he is against imposition of sanctions on Georgia FIRST CHANNEL. 2019. Vladimir Putin says he is against imposition https://1tv.ge/en/news/vladimir-putin-says-he-is-against-imposition-of-sanctions-on-georgia/
19. Georgia's Rose Revolution A Participant's PerspectiveUSIP Special Report Washington United States Institute of Peace (USIP) 2006.
20. Georgian National Tourism Administration. 2019 https://gnta.ge/statistics/
21. Georgia's National Security and Regional Policy after the August 2008 War, Reassessing Security in tgt South Caucasus; Reigional Conflicts and Transformation 2011a 105.
22. Georgia's Pro-Western Path: Analises of the Geargian Foreign Policy in the Post-Sovietİzzet Baysal Üniversitesi Sosyal Bilimler Enstitüsü Dergisi 2014
23. Interpress News Interpress News, Ivanishvili says those, who want closure of Russian market, are Georgia's enemies https://www.interpressnews.ge/en/article/103078-ivanishvili-says-those-who-want-closure-of-russian-market-are-georgias-enemies/
24. JamNews, Giga Otkhozoria's murder, Georgian-Abkhaz relations becoming tense again https://jam-news.net/giga-otkhozorias-murder/
25. Koiava, Revaz, Edisher Baghaturia , and Yulia Nikita. Georgia and Russia: Bilateral view on the quarter century relations. Research report, Tbilisi: Caucasian house, 2017.
26. Kozgambayeva Russia's Geopolitical Interests In Georgia (South Caucasus and the Threats Coming From Moscow)Сериясторическая, 91(4)201927-31.
27. Ministry of Economy and sustainable development of Georgia http://www.economy.ge/?page=videogallery&lang=en
28. "Ministry of the Foreign Affairs of Georgia." 2020. https://mfa.gov.ge/MainNav/ForeignPolicy/NationalSecurityConcept.aspx?lang=en-US (accessed March 30, 2020).
29. National Bank of Georgia https://www.nbg.gov.ge/index.php?m=2&lng=eng
30. National Post National Post, Georgian president calls Russia 'enemy and occupier', accuses Kremlin 'fifth column' of stirring unrest https://nationalpost.com/news/world/georgian-president-calls-russia-enemy-and-occupier-accuses-kremlin-fifth-c
31. National Statistics Office of Georgia https://www.geostat.ge/en/single-categories/122/annual
32. NATO Relations with Georgia https://www.nato.int/cps/en/natohq/topics_38988.htm
33. NATO-One of the Main Guarantees of Peace And Security in South Caucasus, Perceptions of NATO and the New Strategic Concept Connections The Quarterly Journal 2011b61-73
34. North Atlantic Treaty Organisation. March 26, 2019. https://www.nato.int/cps/en/natohq/topics_38988.htm (accessed March 25, 2020).

35. North Atlantic Treaty Organisation. March 26, 2019. https://www.nato.int/cps/en/natohq/topics_38988.htm (accessed March 25, 2020).
36. Pkhaladze, Tengiz, and Nikolay Silaev. "Russian-Georgian relations in the context of European Security. Russia and Georgia." Georgian foundation for strategic and international studies, 2011.
37. Political Science in History: Research programs and political traditions, Cambridge University Press 1995
38. President of Russia. "Speech and the Following Discussion at the Munich Conference on Security Policy." February 10, 2007. http://en.kremlin.ru/events/president/transcripts/24034 (accessed March 29, 2020).
39. Recent Dynamics of Georgian-Russian Relations Security Review, Georgian Foundation of strategic and international studies Rondeli Foundation 20181-7
40. REUTERS. December 3, 2019. https://www.reuters.com/article/us-nato-summit-putin/putin-criticizes-nato-expansion-as-alliance-holds-london-summit-idUSKBN1Y71K5 (accessed March 27, 2020).
41. REUTERS. Putin criticizes NATO expansion as alliance holds London summit https://www.reuters.com/article/us-nato-summit-putin/putin-criticizes-nato-expansion-as-alliance-holds-london-summit-idUSKBN1Y71K5
42. Russia, 1991-2008 Literasi 2014
43. Russia's military intervention in Georgia 2008 August war and its aftermath Tbilisi Universal 2010
44. Russian foreign policy: the return of great power politics (Vol.295, No.10) Lanham, MD Rowman& Littlefield.2009
45. Russian-Georgian relations in context of European security, Russia and Georgia: in search of way out, Documents of social policy developed by Russian and Georgian experts Meeting Tbilisi Georgian foundation for strategic and International Studies2011
46. Security Problems within Post-Soviet Space Connections, 4(2)20051-4
47. Socio-Economic Aspects of Promoting International Tourism In Georgia Social & Economic Revue, 13(4).20151-4
48. Strategy of Long-Term Socio-Economic Development of The Country: Issues of Metodology In Materials of Reports made at the international scientific-practical conference held at Paata Gugushvili Institute of Economics of Iyane Jayakhishvili Tiblisi State University 2013a124
49. Systematic approaches to the development of religious tourism-2019 a
50. The Anatomy of Conflicts Tblisi 2011
51. The Charter of the United Nations, 1945.U.N.1945
52. The choice of independent Georgia The security of the Caspian sea region, 211.
53. The Economic Policy of Waste Management in Georgia Eco Forum Journal 20201-9
54. The end of history and the last man Simon & Schuster Free Press 2006

55. The Five-Day War Managing Moscow After the Georgia CrisisHeinonline 20082-11
56. The Issue of Forming Rational Economic Policy of Environmental Protection Tblisi Globalizm & Business 2018
57. The Limits of Partnership: US-Russian Relations in the Twenty-First Century-Updated Edition Princeton Princeton University Press.2015
58. The Moscow Times . "Putin Criticizes NATO Expansion as Alliance Holds London Summit." December 3, 2019. https://www.themoscowtimes.com/2019/12/03/putin-criticizes-nato-expansion-as-alliance-holds-london-summit-a68457 (accessed March 30, 2020).
59. The policy of non-recognition of Georgia's breakaway regions-problems and perspectives Central Asia and the Caucasus, 14(4)December2013
60. The policy of non-recognition of Georgia's breakaway regions-problems and perspectives Central Asia and the Caucasus 14 (4)20131-4
61. The Role of International Environmental Protection Policy In Georgia In Materials of reports made at the international scientific-practical conference held at Paata Globalization & Business2015169-178
62. The White House. The White House. President Bush Condemns Actions Taken by Russian President in Regards to Georgia https://georgewbush-whitehouse.archives.gov/news/releases/2008/08/20080826-2.html Last accessed on December 11, 2019.
63. Theoretical and Practical Aspects of Economic Development and Growth of Regions. 2019 b 378-380
64. Theoretical basics of business communication and Its connection with other sciences New Economist (4)201869-71
65. Tourism as a factor of acceleration of integration processes in Eurasian space Journal of Eurasian Economic Integration (1)2014 22
66. Two Ossetias in the Context of Russian - Georgian Relations 109-124 European Union 2011.

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TEACHING TOLERANCE AT SCHOOL: THE EXPERIENCE OF MODERN FRENCH EDUCATION SYSTEM

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Abstract: *The fostering tolerance problem in the modern world is becoming increasingly current in the context of globalization processes and the migration crisis. Following the need to cultivate tolerance in the younger generation, French modern education system aims to install the 'values of the Republic' as an element of public school programs. At the same time it turned out that most teachers are not sufficiently trained to carry out educational activities in the sphere of fostering tolerance. The education system reform carried out in 2013 made this training compulsory introducing the so-called 'Common Core Program' (Tronc Commun) to future teachers of all specialties. Within the program teachers deepen their knowledge in history, philosophy, law, sociology, pedagogy.*

Keywords: *Tolerance; Teacher Training; Education; Values; France*

INTRODUCTION

With the rapid transformation of the education system and its adaptation to modern requirements of society, the problem of teacher preparation for professional activity is becoming more and more important. In connection with the future multifunctional activity, participation in the development of education, science, production, spiritual life of society, the problem of qualitative preparation of higher pedagogical educational establishments' graduates is of particularly important. Further improvement requires not only the formation of the professional qualities of future teachers, but also the education to promote national and universal values, active citizenship, pluralism and democracy.

According to French researcher Guy Lheureux, in a modern society focused on the endless consumption of material goods, individualism, the growing influence of social media, the teacher himself should be a guide who leads their students to the people values such as generosity, sympathy, peacefulness. The task of school and education is to maximize the socialization of those 'little people' whose purpose is to live in society (Lheureux 2012, 228).

The role and authority of the teacher is characterized not only by the knowledge he imparts to his students, but also by his personal influence on each individual and a group he is responsible for. Teachers' leading skills comprise the ability to build relationships, organize team work, organize a democratic debate, where everyone can express themselves freely, without implying it to others, instill confidence, and teach to respect each other and to be a good listener.

TOLERANCE AS A VALUE TOUGHT AT SCHOOL

During 2011-2012, 120 French school teachers were interviewed to find out what moral values could help reduce school violence. In this regard, the French teachers attributed respect, kindness and tolerance to the three most important values (Lheureux 2012, 156).

Summarizing the scientific and pedagogical sources indicates that the most complete and accurate definition of the term 'tolerance' is presented in the Declaration of Principles of Tolerance of November 16, 1995. This principle is interpreted as "respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human" (Art. 1.1). Art. 4 of the same Declaration emphasize the importance of proper organization of the education process to prevent intolerance. In particular, the text of the Declaration states: "Education policies and programmes should contribute to development of understanding, solidarity and tolerance among individuals as well as among ethnic, social, cultural, religious and linguistic groups and nations" (UNESCO 1995). Today France, as a country with a diverse population of ethnicities, cultures, and religious beliefs, due to immigration processes since the mid-twentieth century, has accumulated considerable experience in fostering tolerance in schoolchildren.

Public school education programs, in addition to special subjects, also include a 'common foundation (core) of knowledge, skills and culture' - a set of knowledge, skills, values and behaviors necessary for the successful learning and life of the student as an individual and as a future citizen, aged from 6 to 16. According to the Decree of the Ministry of National Education No. 2015-372 of 31.03.2015, the Common Core "provides an open universal education that is shared by all and based on values that allow people to live in a tolerant, free society" (Ministère de l'éducation nationale et de la jeunesse 2015).

The analysis of the Common Core program content, revealed that its components include the cultivation of tolerance: the student works in a team, shares tasks, participates in constructive dialogue, takes different points of view, while defending his views, demonstrating diplomatic abilities, ability to speak and seek consensus; develops the ability to express their feelings and thoughts, respect others, express their feelings and emotions using accurate words; learns to resolve conflicts without aggression, to avoid violence through the ability of accurate expression of own thoughts, communication and reasoning; respect the opinions and freedom of others, refuse any form of intimidation or subjugation; learns to cast aside prejudices and stereotypes, nurtures the ability to value and live with people who differ; is able to show compassion (empathy) and kindness; studies the peculiarities of the organization and functioning of societies, gets acquainted with the diversity of human experience and its forms (scientific and technical discoveries, different cultures, systems of thinking and belief, works of art, representations through which people try to understand the human condition and the world in which they live). Thus, the student "identifies the major problems and challenges of human development and is able to understand the causes and consequences of inequality, the source of conflicts and solidarity" (Ministère de l'éducation nationale et de la jeunesse 2015).

COMPONENTS OF TEACHING TOLERANCE AT SCHOOL

Moral and civic education

The main purpose of civic and moral education of schoolchildren in France is to cultivate the following values of the French Republic, "freedom, equality, brotherhood, secularity (French *laïcité*), solidarity, and a spirit of justice, respect and the absence of any form of discrimination" (Ministère de l'éducation nationale, de l'enseignement sepérieur et de la recherche 2015). In the program of moral and civic education it is explained that "the values of the Republic are connected, first of all, with the humanistic values that determine its civilizational character, such as ethics of truth, requirements of reason, public good, spirit of law, tolerance and desire for peace" (Ministère de l'éducation nationale, de l'enseignement sepérieur et de la recherche 2015).

As a result of the terrorist attacks in France in January 2015, the Ministry of Education has declared 'the mobilization of the school on the values of the Republic', which covers the entire educational cycle from pre-school education to the graduating class of the lyceum. Moral and civic education, including the cultivation of values such as tolerance, is taught a separate discipline in elementary and secondary school and becomes a kind of 'pedagogical lever' designed to improve the 'peaceful coexistence' that has recently come under the threat (Gérard Pithon 2017). Meanwhile, teachers remain unprepared for disputing issues with students who may not share the values being promoted. Many issues are also to discuss regarding the practical implementation of the methods and forms of such education.

In French secondary school, the subject of 'moral and civic education' is usually taught by a teacher of history and geography. In college, such a lesson has usually a form of lecture where the teacher talks about the rules of the home, the rights and responsibilities of students, various institutions, and more. In the lyceum the subject is mostly devoted to discussion (discussion of news, morality or class life), using press materials, pedagogical projects (excursions, charitable assistance, etc.), documentary research and presentations. At the same time, moral and civic education remains almost the only compulsory subject of the curriculum for which future teachers are not specifically trained.

Secularism

It is important to note that secularism in France is an integral part of civic education. According to French scholars, secularity as a universal value and principle of the education system contributes to the cultivation of tolerance in the younger generation, because it unites all people, regardless of the culture, religion and political views (Jean-Louis Bianco 2018; Beaubourg 2004, 234). In the education system of the French Republic, secularity is seen as the freedom of conscience, which is both freedom of religion and freedom of atheism. This principle, enshrined in the law of 1905 on the separation of the church from the state, is intended to protect school students from ideological, economic and religious proselytism. The concept of secularism has evolved since the beginning of the twentieth century, when it was equal to the principle of neutrality of state 'secular' schools, which guaranteed the separation of the state (in particular, the public school) from religious dogmas (Christian, Muslim and any other). Today, secularism has become a universal value and largely determines the direction of moral and civic education in school. It becomes more rational than simple neutrality of education, and aims to educate children for democracy within the walls of a tolerant school, where the upbringing of multiculturalism is filled with genuine respectful moral values (respect for dignity, respect for ethnic differences, respect between adults and children; respect between teachers and students; tolerance of children who learn less quickly or who have learning difficulties; secularity based on debate and discussion when the teacher encourages an exchange of ideas or discussion, for example during conflict

between two students in the class, etc.) (Lheureux 2013, 143). At the same time, a survey of teachers conducted by the National Secular Committee found that 74% of teachers had no training in secular teaching at school (Comité National d'Action Laïque 2018).

French education researchers (Beitone 2015; Fath 1991; Berton 2007) insist on the need to make secularism a compulsory component of future teacher training, only few, like teachers in economics and social sciences, history, geography and philosophy, have sufficient epistemological training to avoid both scientific arrogance and relativistic limitation, considering with the students questions of secularity. At the same time, it is important for teachers not to understand secularism as an imposition of values or as a punishment for failure to comply with certain norms, so secularity may prove to be the opposite of tolerance, as is the case with the prohibition of wearing religious clothing and hats in French schools (George 2003).

Religious Studies

The cultivation of tolerance is one of the major tasks of religious studies taught in the French school in disciplines such as history, literature and philosophy. Teachers testify to the difficulties in teaching French, history, philosophy, and fine arts, while today their students do not have sufficient vocabulary or formed concepts important for understanding religious issues. This emphasizes once again the importance of an education that would allow young people of different backgrounds and cultures to get to know each other better, to accept each other, to communicate with each other. In general, the issues of enriching the general culture and developing tolerance are closely linked to the social expectations of different actors in the education system. As Jacques George notes, "Religious studies are not only a history of religions that is already included in history programs, but also a look at the present" (George 2003). Teaching future educators the basics of religious studies, in particular using an interdisciplinary approach, through history, philosophy, literature, art, aims to allow each future teacher at the stage of learning to improve the preparation of teaching their own discipline through comparison and adaptation, to realize different approaches to teaching their subject are complementary, and possibly to open up to cultural facts, even far from their university program (Berton 2007, 129).

Multicultural Component

It is also useful to note that the multicultural component is perhaps the most important element in preparing future teachers for fostering tolerance. For example, since the early 1970s, the term 'intercultural education' has been used in French pedagogical science to mean "a set of actions which a single teacher or, more generally, a school, uses to establish relationships that are based on positive interaction and understanding between students of

different cultures" (Kerzil 2002, 122). Thus, intercultural education enables every child, the bearer of various cultural references, to absorb the knowledge and cultural codes of the society which he or she lives in. Therefore, the main task of intercultural education is to open the eyes of the child and the youth to the world around them, to teach them to be inquisitive and tolerant of diversity, to be able to interact with others, as well as to manage conflicts and negotiate. The rapid development of multiculturalism and multilingualism in societies, including the countries of the European Union, has made teacher training for multicultural classes a priority.

THE CURRENT STATE OF TEACHER TRAINING IN FRANCE

The need to prepare teachers for fostering tolerance in students has led to a significant transformation of the higher education system. Since 2013, the Training of Teachers and other Educators in France has been undertaken by the Higher Education Teacher Training Courses (fr. *École Supérieure du Professorat et de L'éducation* - ESPE). To create a pedagogical culture common to all, without exception, educators, into a two-year training program in the professions in the field of upbringing, education and training (fr. *Métiers de l'enseignement, de l'éducation et de la formation* - MEEF) in addition to special disciplines, a basic general program (fr. *Tronc Commun*) was introduced covering all four semesters of master's studies (Legifrance.gouv.fr 2013). The structure of this basic general training program is based on four major thematic complexes, one of which is called 'Republican values and the ethical and institutional character of the profession', which embodies the concept of secularism, the fight against discrimination, the culture of gender equality between men and women. Understanding the values that underlie tolerance, the ability to impart them to students within a classroom or educational setting are subject to a special survey in the context of oral qualification exams. The ESPE executives are offered the following topics for the basic general program:

- History: study of religious facts, history of education;
- Philosophy: citizenship, secularism, critical thinking, rights and responsibilities, ethics and responsibility;
- Law: rights and responsibilities, ethics and responsibility, knowledge of law, security;
- Sociology: the place of the school in society and its tasks, education policy, democratization, inequality of education performance and social background, relationships with families;
- Psychology: psycho-effective development of the child and the teenager; building authority and trust; prevention of certain behaviors, discrimination, problem of otherness (differences) (Syndicat national de l'enseignement supérieur 2015).

In the 2016-2017 academic year, the following courses were included in the general curriculum for the preparation of future teachers of the 1st (elementary school) and the 2nd (secondary school) levels at the Paris High School for Teaching Personnel of Paris: "Teaching Secularity and Religious Studies, Theoretical and Practical Aspects", "Secularism at Schools", "History of Arts and Teaching of Religious Studies", "Education of Citizenship", "Work with Students' Families", "Combat Discrimination at School and its Prevention", "Secularism and Religious Studies", "Secularism and Republican School: Key Issues and Challenges", "New Moral and Civic Education Program", "Organizing Philosophical Clubs at School", "Combating School Violence", "Educating Media and Information Literacy in the Context of Citizenship" and others (Ecole supérieure du professorat et de l'éducation. Académie de Paris 2016). Such training, which combines the theoretical and practical aspects of fostering tolerance, is very often interactive, opening the space for questions and discussions based on the knowledge gained, as well as considering the problems of their practical application in dealing with complex and important issues in the educational work with students.

CONCLUSION

Tolerance is a moral value that should be taught to students. The introduction into the school program of a 'common core of knowledge, skills and culture' aimed at educating a person able to live in a free, tolerant society, necessitates appropriate training for future teachers who can promote tolerance in students. Preparing future teachers to teach tolerance is an urgent need of the French teacher education system.

So, basic curriculum that is compulsory for all future teachers was introduced in the higher education teacher training program. Components of this program, such as moral and civic education, religious studies, secularism, intercultural education, are directly connected with the promotion of tolerance and contribute to the knowledge and practical skills required for the teacher to work effectively with students. As the problem is getting more and more urgent for most European countries facing intolerance, aggression, xenophobia, increased attention to training future teachers to foster tolerance in schoolchildren should help reduce the negative effects in society. Developing the training of future teachers to cultivate tolerance is at the same time important for the development of competencies such as emotional intelligence and the fight against bullying at school.

The theory and practice of pedagogical education in France has accumulated considerable experience in training a future teacher to cultivate tolerance among schoolchildren in accordance with the value priorities of French society. In our opinion, the inclusion of elements of tolerance cultivation in the academic curriculum of teachers of particular disciplines (foreign languages, literature, philosophy, history, geography, physical education, etc.) through the use of an interdisciplinary approach will contribute to the effectiveness of training to teach tolerance; enhancing the role of pedagogical practice in

preparing teachers for educational activities; training teachers to work in a multicultural classroom to teach immigrant children, including preparation for bilingual learning; involvement of future teachers in extracurricular activities (hobby classes, discussion clubs, volunteer activities). 

REFERENCES

1. Beitone, Alain. 2015. "Laïcité et formation des enseignants." Démocratisation-scolaire.fr, January 26. Accessed September 18, 2019. https://www.democratisation-scolaire.fr/spip.php?breve53
2. Berton, Bettina. 2007. "La laïcité dans la formation des enseignants. " Spirale. Revue de recherches en éducation 39: 125-37. Accessed September 30, 2019. doi : https://doi.org/10.3406/spira.2007.1259. https://www.persee.fr/doc/spira_0994-3722_2007_num_39_1_1259
3. Bobero, Jean. 2004. "Secularity: French Exclusivity or Universal Value?" Duh i Litera 13-14: 227-35.
4. Comité National d'Action Laïque. 2018. La laïcité et l'Ecole : les enseignants ont la parole. Colloque du 13 juin. Accessed October 11, 2019. https://www.cnal.info/wordpress/wp-content/uploads/2018/06/Synth%c3%a8se-%c3%a9tude-Ifop-etCnal.pdf
5. Ecole supérieure du professorat et de l'éducation. Académie de Paris. 2016. "Catalogue. Tronc commun de formation 2016-2017." Accessed April 14, 2017. https://www.inspe-paris.fr/sites/www.espe-paris.fr/files/file_fields/2016/09/08/options120162017catalogueseptembre2016.pdf
6. Fath, Gérard. 1991. "Laïcité et formation des maîtres." Revue française de pédagogie 97: 65–74. Accessed September 28, 2019. doi : https://doi.org/10.3406/rfp.1991.1341. https://www.persee.fr/doc/rfp_0556-7807_1991_num_97_1_1341
7. George, Jacques. 2003. "Laïcité XXIe siècle." Les Cahiers pédagogiques, December 27. Accessed October 8, 2019. http://www.cahiers-pedagogiques.com/Laicite-XXIe-siecle
8. Kerzil, Jennifer. 2002. "L'éducation interculturelle en France: un ensemble de pratiques évolutives au service d'enjeux complexes." Carrefours de l'éducation 2(14): 120-59.]
9. Legifrance.gouv.fr. 2013. "Arrêté du 27 août fixant le cadre national des formations dispensées au sein des masters «métiers de l'enseignement, de l'éducation et de la formation." Accessed October 12, 2019. https://www.legifrance.gouv.fr/eli/arrete/2013/8/27/ESRS1319419A/jo/texte
10. Lheureux, Guy. 2012. "Le problème de l'éducation morale (en France au XXè siècle) dans l'enseignement élémentaire". Thèse de doctorat en sciences de l'éducation, Université de Rennes 2.
11. Ministère de l'éducation nationale, de l'enseignement sepérieur et de la recherche. 2015. Programme d'enseignement moral et civique. Bulletin officiel spécial n° 6 du 25 juin 2015. Accessed September 10, 2019. http://cache.media.education.gouv.fr/file/MEN_SPE_6/66/2/2015_BO_SPE_6-pdf_478662.pdf

12. Ministère de l'éducation nationale et de la jeunesse. 2015. Socle commun de connaissances, de compétences et de culture. Bulletin officiel n°17 du 23 avril 2015. Accessed August 31, 2019. https://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=87834
13. Pithon, Gérard. 2017. "Quelle éducation morale et civique à l'école ? Pourquoi et comment la mettre en œuvre ?" Éducation et socialisation [En ligne], 46 | 2017. Accessed October 17, 2019. http://journals.openedition.org/edso/2731 ; DOI : 10.4000/edso.2731
14. Syndicat national de l'enseignement supérieur. 2015. "Mise en œuvre du tronc commun de la formation | note du MENESR aux directeurs d'ÉSPÉ (30 avril 2015)." Accessed October 11, 2019. http://www.snesup.fr/article/mise-en-oeuvre-du-tronc-commun-de-la-formation-note-du-menesr-aux-directeurs-despe-30-avril
15. UNESCO. 1995. Declaration of Principles on Tolerance. Accessed October 15, 2019. http://portal.unesco.org/en/ev.phpURL_ID=13175&URL_DO=DO_TOPIC&URL_SECTION=201.html

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THE POSITION OF MINORITIES IN THE NEW STATE OF KOSOVO

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Abstract: *Although the Republic of Kosovo is a multi-ethnic society based on its 2008 Constitution, one particular minority is more protected and enjoys more rights compared to the others. It is the ethnic Serb community that appears to be the biggest obstacle for the future developments in Kosovo. The attitude of this ethnic community towards the state of Kosovo determines the Kosovo inner developments; it determines the relationships between Kosovo and Serbia and it could have some impact in the entire region of the Balkans. Using the combined methodology with methods of historical analysis and a method of legal analysis the author will describe and explain the position of the national communities known as minorities, including the position of Serbian minority in Kosovo according to the Kosovo legal system and the international law. Minorities enjoy constitutional protection of their rights, whereas the Serb community and its position are different compared to the other minorities. The different position of Serb minority derives in some way from the obligations Kosovo has taken from the international community, especially from the obligations that come from the Comprehensive Proposal for the Kosovo Status Settlement. This paper gives an analysis of the legal infrastructure in order to explore if the existing legal infrastructure substantially ensures the minority rights and if it ensures their protection. The conclusions of the paper aim to contribute to the academic debate and the practical work in the field.*

Keywords: *Constitution; National; Community; Minority; Kosovo; Serbs*

INTRODUCTION

The issue of the minorities is not something quite new in our world. The term minority has been used for a long time, but its meaning was different than what we understand nowadays. The term minority is a very broad notion today because it itself includes individuals who for various reasons are marginalized. They are for example: homosexuals, handicapped, etc. The term as seen could be very broad in sense of meaning, but historically and also in the political framework, the sharper problem that led to interstate conflicts is that of ethnic minorities, within which- in some cases - religious minorities are included, as well (Omari 2014, 7). Even though we find a lot about the minorities in literature, the aim of this paper is not to describe the term historically, at least the paper will not cover old or ancient times. Nonetheless, Europe could be considered as a cradle of minorities. Exactly between the powers of our continent the first treaties were signed in order to defend some populations which were still not determined as 'minorities', but they wanted to be loyal to the religious communities where their roots belonged to (Scholsem 2011).

In the European context, the paper will describe, explain, and compare the phenomenon of the minority issues in Kosovo, especially after 1999. The problem of minorities and the phenomenon of repression starts with the birth of modern states, in the period of absolutism, and this happened mainly for the religious reasons, at least at the beginning (Encyclopedia Universalis Corpus 15). Many examples could be given about how these minorities (religious) were treated. They are known as the expulsion of the Jews from Spain, the St. Bartholomew's Day Massacre, etc. These repressions and expulsions continued over the time. Ethnic clashes on the European Continent were resurrected with the demolition of the communist system in the countries of the Soviet Union and in Southern and Eastern Europe. The problems with the minorities and the use of force against them took place before, as well, during the years that followed the so-called socialist block (Omari 2014, 27). It is a well-known fact that the Republic of Bulgaria during the 1950s undertook heavy measures against the Turkish minority which was followed by the expulsion of a bigger part of Turkish minority. Relationships between Romania and Hungary were tensed because of the treatment of the big Hungarian minority on Romanian territory, etc. Fierce conflicts that could be related to the issue of minorities also took place during the dissolution process of former Yugoslavia. However, as far as Yugoslavia is concerned there are thoughts that ethnic issues didn't provoke the Yugoslav crisis: "A more compelling interpretation identifies its main reasons in the deep economic fall at the end of 1980s, strategies of new elites in Serbia and Croatia, exogenous factors as they were last repercussions of the Cold War and divergent interests as well as indecision of European powers" (Capusella 2015, 247). Yugoslavia disintegrated also due to the two main orientations that its subjects aspired: a majority that aspired decentralization and national freedom and independence against the hegemony on one side, and a minority (Serbia) that requested hegemony and domination on the other

side. States were created during the history, borders were drawn as a result of wars or agreements, but the minorities - when they were left outside of their mother countries– were, unfortunately not consulted. So they were left in the territories they perhaps in a lot of cases (if not in all cases) did not wish to belong to the states they belonged to after the determination of the borders, etc. If asked, they surely would not agree to live in the other country as the minority. After the armed conflicts overcame, in many of these countries the minority problems remained. According to some data:

> Lithuania and especially Estonia continue to have a big russophone minority (in Lithuania 16.6% and in Estonia around 30% of the population and this percentage is high also as a result of inner migrations planned by central authorities during the communist regime). In Slovenia number of minorities achieves 17%, in Slovakia 14.2%, in Bulgaria 12.4%, in Romania 10.5%. While in Hungary in Poland and the Czech Republic the number of minorities is less than 5% (Pogacean 2014, 28).

The following citation in addition to what was given above helps further explanation. In their Eighth Assessment of the Situation of Ethnic Minorities in Kosovo, the OSCE and United Nations High Commissioner for Refugees (UNHCR) said:

> Though conscious of the growing complexity and sensitivity surrounding minority issues and cognizant of the tendency to speak of local communities as opposed to minorities, we have maintained the structure and terminology of previous reports. This is not done out of insensitivity but rather out of efficacy. Therefore, we continue to use the phrase minority and its use simply refers to any community that lives in a situation where they are a numeric minority relative to the communities surrounding them. As such, the term is as applicable to Kosovo Serbs in Gracanica/Ulpijana as it is to Kosovo Albanians in north Mitrovice/Mitrovica (Baldwin 2006).

DEFINING MINORITIES AND INTERNATIONAL PROTECTION OF MINORITIES

Even though it is difficult to find a clear definition, there are international conventions and national laws that protect the minorities and that are used to create the mechanisms of protection. The Framework Convention for the Protection of National Minorities is one of the very important conventions in Europe that protects minorities. The Convention was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member states of the Council of Europe on 1 February 1995. Non-member states may also be invited by the Committee of Ministers to become Party of this instrument (Framework Convention for the Protection of National Minorities Council of

Europe, Strasbourg, February 1995). Based on the convention, the countries themselves will decide how to define minorities. An effort to define a minority was done by Francesco Capotoroti:

> A group numerically smaller compared to the other part of the population of a state, group that has a not ruling position, whose members are citizens of the state, but from the ethnic, religious or language viewpoint differ from the other part of the population and present in an even implicit way a feeling of solidarity with the aim of saving their culture, their religion and their language (Omari 2014, 30-31).

This definition covers objective and one subjective element, but it could not be said that it was generally accepted. Thus there is also no definition about minorities in the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the UN General Assembly on December 18, 1992 (Omari 2014). Anyway, Article 2 of this Declaration makes a great resource from which definitions on minorities could be drawn. In this regard, a lot of efforts were made in order to come to a precise and generally accepted definition of a minority, but nonetheless, different states define them according to their rules. According to the article 2 of the mentioned Declaration:

> Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

In continuation of treating the problem of defining a minority, in an opinion of the Venice Commission it is said that:

> It is highlighted that in the international plane, International Covenant on Civil and Political Rights uses expression 'ethnic, religious or language minority', whereas in the national plane there are various terms: in Austria and Hungary we talk about 'ethnic groups', in Finland there are used terms 'minority' and 'racial group, group of national origin (...)' or 'religious group'. In Slovakia there are talks about 'national minorities and ethnic groups'. We should bear in minds that terms used to define minorities are synonyms. On the other side Greece talks about 'religious minorities [it could be added that it doesn't recognize existence of national minorities at all-note by Luan Omari]. In Macedonia the term *narodnost/kombesi* is used (borrowed from the former Yugoslavia terminology). This last term is adopted also by the Slovenia legislation (Omari 2014, 35).

At present, Albania recognizes Greeks, Macedonians, Montenegrins and Serbs as national minorities whereas Vlach/Aromanian and Roma are recognized only as linguistic/cultural minorities. National minorities as well as linguistic ones are recognized by the multilateral treaty of the Council of Europe - Framework Convention for the Protection of National Minorities-which Albania ratified in 1999 (KIPRED 2014, 8).

REGULATION AND PROTECTION IN KOSOVO

Kosovo is a new independent state in the Balkans that derived from the process of dissolution of the former federation of Yugoslavia. It was one of the eight federal units and one of the seven units that became independent states from the former Yugoslav federation. (Rrahmani and Belegu 2013) Indeed:

> Kosovo is the newest state and the last one created from the process of the dissolution of former Federation of Yugoslavia. Yugoslavia was dissolute among the others, also due to the two main orientations its subjects aspired: a majority that aspired decentralization and national freedom and independence against hegemony in one side and minority (Serbia) that requested hegemony and domination, on the other side. Unfortunately, the process of dissolution of the federation was followed by wars, terror and consequences which were not seen in Europe since the World War II. Since these consequences and the terror threatened to spread outside of the territories of the former federation, the international Community engaged in various forms and with various instruments, if for nothing else, at least to localize the conflict (Rrahmani 2018).

After 78 days of NATO bombings against military and paramilitary forces, in 1999 the United Nations took over the administration of Kosovo with minority rights at the core of its mandate (Baldwin 2006). Thus, the main government authority in Kosovo has been the United Nations Mission in Kosovo, set up as the 'international civil presence' under 1244 (Baldwin 2006), which was adopted by the UN Security Council in June 10, 1999. From 1999 until 2008 Kosovo has undergone through a process of fulfilling a series of duties in order to get into a phase of so called final status talks with Serbia. The process of creation of the state of Kosovo has been a long process that reached its culmination with the Declaration of Independence which was adopted by the Kosovo Parliament on February 17, 2008 (Rrahmani 2018). Since then Kosovo has been recognized as the independent state by 116 states. Kosovo is a multi-ethnic state. The main reason for having Kosovo as a multi-ethnic state is its state-building process which is done by fulfilling a series of international obligations, beginning with those from 'Ahtisaari Plan' and continuing with obligations emerging from various international mechanisms. Negotiations for the status of Kosovo status were thus held under the shadow of ethnic issues. Independence was expected. In exchange, Belgrade would be

offered wide protection of the Serb minority and the Serb heritage in Kosovo. The protection of minorities was also a priority for the western powers, not only for justice reasons, but also because of insulation of the multi-ethnic character of the new state, and to prevent the new wave of emigration of Serbs which would discredit the way of how Kosovo was managed (Capussela 2015, 148). It is worth emphasizing that "Kosovo is the most homogeneous state in the Balkans (Capussela 2015, 153), whereas by its constitution it is a multi-ethnic state. Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution (Article 57, Par.1 Kosovo Constitution). Actually Kosovo recognizes seven ethnic groups as official minorities: Serbs (1.5%), Bosniaks (1.6%), Turks (1.1%), Askali (0.9%), Gorani (0.6%), Egyptians (0.6%) and Roma (0.5%) (KIPRED 2014, 24).

Kosovo declared its independence on February 17, 2008 and it accepted all obligations foreseen with the 'Ahtisaari Plan' – 'Comprehensive Proposal for the Kosovo Status Settlement'. Furthermore, "Ahtisaari proposal determines broad minority rights which go beyond those covered by Framework Convention for the Protection of National Minorities. For example, Serbian is official language all over Kosovo, including zones where Serb Community is not majority" (KIPRED 2014). In Kosovo the legal infrastructure ensures rights which advance the rights of minorities respecting all international standards. Even more than that, the participation of minorities at all levels of governance is ensured, as well as their presence in all forms of governance. Thus, they are present in the Parliament as it follows: parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community shall have the total number of seats won through an open election, with a minimum of ten (10) seats guaranteed - if the number of seats won is less than ten (10) (Article 64, p.2.1., Kosovo Constitution); and parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through an open election, with a minimum number of seats in the Assembly guaranteed as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosnian community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat if the number of seats won by each community is less than the number guaranteed (Article 64, p. 2.2., Kosovo Constitution). The position of the Serb minority is practically different from the other minorities. There are discussions and debates about this, as well as attitudes and opinions *pro et contra*. There are also efforts to politically justify the position of this minority, part of which slowly recognizes Kosovo as their country. The Serb minority is overrepresented and more emphasized in political institutions.

Specifically they elect double more MPs *per capita* compared to the Albanian Community, and 1.2 times more than other minorities (ratios that increase 4.3 times and 2.4 times respectively, if Serbs of the North are excluded) (Capussela 2015, 150). In municipalities where at least ten per cent (10%) of the residents belong to communities that are not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities (Article 62, paragraph 1, Kosovo Constitution). Further, regarding the position of the Serb minority, their guaranteed rights are as follows: representation of communities is also guaranteed at the ministerial level. Article 96 of the constitution states that the Serb community must be represented by one minister, and that one minister must be appointed from another minority community; a third minister from a minority community can also be appointed if the Kosovo government has more than 12 ministries. The constitution also mandates the creation of Consultative Council for Communities (CCC) under the auspices of the President of Kosovo (Article 60). The duties of the CCC are as follows:

a) to assist in the organization and the articulation of the views of communities and their members in relation to legislation, public policy and programs of special relevance to them;
b) to provide a forum for coordination and consultation amongst communities, and to ensure the effective functioning of the community representative organizations according to a code of conduct to be adopted by the Community Consultative Council;
c) to provide a mechanism for regular exchange between communities and state institutions;
d) to afford the communities the opportunity to participate at an early stage on legislative or policy initiatives that may be prepared by the Government or the Assembly, to suggest such initiatives and to have their views incorporated in the relevant projects and programs, including the annual strategy and report under Article 13 of this law, in accordance with the law;
e) to fulfill requests for other mandatory consultations with regard to certain legal acts, as foreseen in the Constitution and the law;
f) to enable communities to participate in the needs assessments, design, monitoring and evaluation of programs that are aimed at their members or are of special relevance to them;
g) to make recommendations during the decision-making process concerning the apportionment of funds, both international and allocated from the budget of the Republic of Kosovo, for projects aimed at communities or their specific interests;
h) to contribute to the reporting of the government of Kosovo to international human rights mechanisms; and

i) to raise awareness of community concerns within the Republic of Kosovo and to contribute to harmonious relations between all communities within the Republic of Kosovo (Article 12, Law No.03/L-047).

DIVISIONS AND DISAGREEMENTS

The Kosovo legal infrastructure is a good basis for protection of all minorities whereas it pays more specific attention to the Serb minority. But the Serb community is divided in regard to their attitudes regarding their future in Kosovo. A Kosovo think-tank organization, immediately after the declaration of the Kosovo independence, produced a study regarding the Serbs after the declaration of independence and the following should be of interest to be taken from the report:

> Following the declaration of independence, three distinct groups emerged among Kosovo Serbs. The first includes political leaders boycotting Kosovo institutions, but at the same time opposing Serbia's policies. The second group revolves around Kosovo Serb political parties participating in Kosovo institutions. The third group includes political and other leaders directly controlled by the Government of Serbia. These divisions have generally manifested south and north of the Ibër/Ibar river (KIPRED 2008, 6).

River Iber/Ibar is a river that divides Mitrovica, which before the Kosovo War was one of the biggest cities in Kosovo. The issue of the minority rights regarding North and South Mitrovica (and North and South of Kosovo) becomes much more political, rather than a human rights issue. Washington Post (2005) in article states:

> Once one of the wealthiest areas in the former country of Yugoslavia, the struggling city is now split in two because of ethnic tensions, political upheaval and painful memories. While South Mitrovica claims to belong to the independent state of Kosovo, North Mitrovica still vows allegiance to Serbia. The river Ibar, which runs through the center, acts both a physical and ideological barrier.

Kosovo has an adequate institutional and legal framework for the rights and the protection of the minorities, including strategies and action plans. However, implementation is weak and there is a large dependency on international donors for supporting the minority communities. The institutional set-up and mechanisms for protecting the minority communities are in place but lack coordination (EU Commission Progress Report 2018, 26). It is clear that Kosovo has an adequate institutional and legal framework also for all fields of life in Kosovo and it is clear that the implementation of laws has still various shortcomings.

The issues of human rights and minority rights should sometimes be analyzed beyond the legal mechanisms of law implementation. This needs some explanation. Legal mechanisms ensure, as said during the article, protection of minority rights in Kosovo with the specific attention to Kosovo Serbs. And what are the categories of fundamental rights central to ensuring the effective protection of minority rights that can be established? ECMI (2013) cites Kempin Reuter .T, by presenting three categories as follows:

- The rights aiming to protect minorities from extinction and discrimination. As far as compatible with the fundamental rights and freedoms of others, minority communities shall not be denied the right to be recognized as a group, enjoy their own culture and religion, use their own language, establish their schools, and receive teaching in the language of their choice.
- The rights designed to preserve and safeguard the ethnic and cultural identity of the group. A pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop their identity.
- The rights aimed to empower minority communities. Minority communities need to have the authority to determine their own affairs and to be able to actively participate in state affairs. To put it simply, the state needs to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social, economic and public affairs, particularly on issues directly affecting them. This includes achieving proportional representation in government positions, and active and equal participation in public affairs (pp. 9-10).

These three categories are protected by the Kosovo Constitution and by the Kosovo legislation. In addition to what was elaborated it is important to specify an issue that is perhaps found only in the Kosovar legal system. Minorities in the process of legislation have in some cases the right to veto the legislation. Laws that regulate areas known as 'vital interest' cannot be passed through the normal procedure of majority votes. The following laws require for their adoption, amendment or repeal both the presence and votes of the majority of the Assembly deputies and the presence and votes of the majority of the Assembly deputies who hold seats reserved or guaranteed for representatives of Communities that are not in the majority:

1. Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in intermunicipal and cross-border relations;
2. Laws implementing the rights of Communities and their members, other than those set forth in the Constitution;
3. Laws on the use of language;

4. Laws on local elections;
5. Laws on protection of cultural heritage;
6. Laws on religious freedom or on agreements with religious communities;
7. Laws on education;
8. Laws on the use of symbols, including community symbols and on public holidays (Kosovo Constitution, Article 81).

Furthermore the constitution of Kosovo regulates that none of the laws of vital interest may be submitted to a referendum (Article 81, para. 2). In some situations, a neighbor state may play a positive or a negative role regarding protection or realization of human rights. Kosovo is a clear example when talking about the impact a neighbor country has. Behind the care that Serbia shows for the Serbs who live in Kosovo, the will of the state of Serbia to impose a separation of Kosovo remains sometimes clear and sometimes hidden. This is seen all the time in the field and the following is the best example to prove this. Today, the position of Kosovo Serbs is dependent on Serbia, both in terms of security and political power to oppose and boycott the institutions of Kosovo. As Serb politician Oliver Ivanovic states: "Whatever Serbia agrees, Kosovo Serbs will have to accept, or leave" (Minority Rights Group 2009, 10). This statement given by a known Kosovo Serb politician gives the most appropriate answer to the always raised question: why there are still problems with the minorities in Kosovo? Unfortunately, Oliver Ivanovic is not alive anymore. He was killed, and investigations still have not brought any information about this murder.

CONCLUSION

Kosovo is one of the countries that have given maximum rights to its minorities, which are guaranteed with the Kosovar legislation. These rights given to the minorities legally are equal for all ethnic groups, but in practice there is an ethnic minority that enjoys more rights or that is more than equal to the others. The legal infrastructure guarantees a safe environment for minority rights and this infrastructure could be considered as one of the most advanced in the region. In addition to what was presented, for one of the minorities we have to deal with the principle of positive discrimination, which was not described specifically. However, the legal infrastructure on human rights and especially on minority rights should be applied equally to all minorities. The fact that Kosovo has created a very advanced system for protecting human rights and minority rights is something to be appreciated firstly by the minorities. Mechanisms that monitor the situation with human rights in Kosovo should also appreciate this. The existing process should not be rigid as given once forever. These rights are not artificially created. They are so because it was a consensus in the society for accepting international standards on human rights. International standards are respected and the system of protecting rights is in place.

Awareness should be raised within the minorities on exercising the rights on one side, and awareness should be raised in sense that minority rights are not to be used for threatening with creation of new mechanisms that could lead towards partition of the state or for creating states within the state. The international community should give more opportunities for local agreements and local dialogue between the communities rather than to monitor and instruct mechanically what should be done. The constitution of Kosovoand the entire legislation is in accordance with the international standards and Kosovo has shown commitment to fulfill all obligations deriving from any international documents and mechanisms. If we talk in principle about the democracy and the rule of law, it is clear that there is no strong democracy but this fragile democracy is not fragile only for the minorities. It belongs to all. As long as the dialogue between Kosovo and Serbia lasts the sound system of protecting the minority rights will not be completely be realized and fulfilled and there will be political tensions, which actually are not indigenous. They are smuggled for some other interests and not for the interests of the minorities in Kosovo. 

REFERENCES

1. Bajrami A. (2011) Sistemi Kushtetues i Republikës së Kosovës, Artini, Prishtinë.
2. Beha,A. (2014), Journal on Ethnopolitics and Minority Issues in Europe,Vol 13, No 4, 2014, 85-110.
3. Baldwin C. (2006). Minority Rights in Kosovo under International Rule, Minority Rights Group International.
4. Capusella,L.A. (2015). Shtetndërtimi në Kosovë: Demokracia, Korrupsioni dhe BE-ja në Ballkan, Koha Prishtinë.
5. Constitution of the Republic of Kosovo, 2008.
6. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 47/135 of 18 December 1992 adopted by General Assembly.
7. Framework Convention for the Protection of National Minorities and Explanatory Report, Council of Europe (1995), Strasbourg.
8. Gruda Z. (2007). E Drejta Ndërkombëtare Publike (Botim i plotësuar dhe i përmirësuar), Furkam ISM – Shkup.
9. Gruda Z. (2010). Mbrojtja Ndërkombëtare e të Drejtave të Njeriut, Botimi i Pestë, Prishtinë.
10. International Covenant on Civil and Political Rights, 1976.
11. KIPRED, (2014). Marrëdhëniet Ndëretnike në Ballkanin Perëndimor: Implikimet për Kosovën, Nr.6/14, Prishtinë.
12. Law on the Protection from Discrimination (2015).
13. Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 2008.
14. Omari L. (2014). Çështja e Pakicave Kombëtare dhe Shqipëria, Dudaj, Tiranë.
15. Pamphlet No. 7 of the UN Guide for Minorities.
16. Rrahmani B. (2018). Recognition of New States: Kosovo Case. Journal of Liberty and International Affairs. 4. 1857-9760. http://e-jlia.com/index.php?page=paper-details&id=13_5
17. Rrahmani B. and Belegu M. (2013). The Engagement of The Republic of Slovakia in the Balkans is very important, International Conference Booklet – 10 Years of SlovakAid, Pontis Foundation, ISBN 978 – 80 – 971310 – 1 – 2.
18. Rrahmani B.(2018). Neutrality of the EU, additional obstacle in the Kosovo EU integration process, Thesis, no.1, 2018 AAB College, Prishtina.
19. Sebastien G. And Gilles P. (2014). Kosova Rrëfime për Ndërtimin e një Shteti, Koha, Prishtinë.
20. Sergio C. (2017). CEPS (Coordinator), Brussels, Belgium Elspeth GUILD, CEPS, Brussels, Belgium Lina VOSYLIŪTĖ, CEPS, Brussels, Belgium Petra BARD, Central European University (CEU)/ELTE School of Law, Budapest, Hungary, Towards a Comprehensive

EU Protection System for Minorities, European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs European Parliament.
21. KIPRED (2008). Kosovo Serbs after the Declaration of Independence: the Right Momentum for Confidence Building Measures.
22. Washington Post (2015). A tale of two cities: The river separating ethnic groups.
23. EU Commission Kosovo Report (2018).
24. ECMI (2013). Communities in Kosovo: A guidebook for professional working with communities in Kosovo.
25. Kempin Reuter .T, 'Including Minority Rights in Peace Agreements: A Benefit or Obstacle to Peace Processes after Ethnic Conflicts?', in International Journal on Minority and Group Rights, vol. 19, 2012, p. 363 (cited by ECMI in Communities in Kosovo: A guidebook for professionals working with communities in Kosovo.
26. Minority Rights Group International (2009) Report, 54 Commercial Street, London E1 6LT, United Kingdom, https://minorityrights.org/wp-content/uploads/old-site-downloads/download-635-Click-here-to-download-report.pdf,accessed

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DEMOCRACY BEYOND ELECTIONS: GOVERNMENT ACCOUNTABILITY IN THE MEDIA AGE[1]

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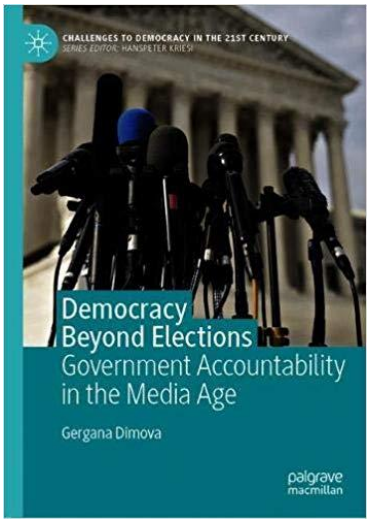

It is a challenge to make a significant conceptual contribution in the vast sea of political science literature, yet the author Gergana Dimova in her newest book 'Democracy beyond Elections: Government Accountability in the Media Age' has managed to provide a new perspective, very apt to the title. This lecturer in politics at the University of Winchester in the United Kingdom has clearly been influenced by her eminent educational background as a Harvard University and University of Cambridge alumna. Published in a perfect moment when the actuality and pressing issues of fake news and hate speech, as well as other forms of political and social behavior manifested through the media pose real threat to democracy, society and even security, the book successfully delivers the dichotomy of such issues and the contrasting situation of manifold accessible data that could foster democratic awareness and action.

[1] Author of the book: Gergana Dimova. Publisher: Palgrave McMillan, 2020. Website: https://www.palgrave.com/gp/book/9783030252939#aboutBook

Thus, the author has established excellent analytical and conceptual ground for possible scientifically based government policy making and civic action. Unlike the vast majority of political scientists that tie elections with the core of democracy, the author relies on an alternative path focusing on the qualitative features of political institutional, non-institutional and citizens' functioning between elections while elaborating upon the complex interrelation of media and the great versatility of accountability fora and their social and political significance. The author Gergana Dimova argues the diminished role of elections regarding successfully upholding democratic principles and substance due to elections' conceptual and operational flaws, while simultaneously weighs all types of accountability fora that impact certain democratic trends and outputs and elaborates how various subjects affect political accountability. As well, she reveals precisely how accountability mechanisms in each of the sample case study countries (Russia, Germany and Bulgaria) work by engaging into in-depth analysis.

In addition, she puts into context the inherent features of media as both conductive and inhibiting democratic factor, thus elucidating the complexity of Media Age. Through the prism of media allegations in between elections, the author determines the entanglement of media and accountability, entailing the accountability of an incumbent, his/her policies, cases investigation and adequate sanctions, i.e. types of government's response. By establishing well-crafted terms (including the creation of the new notion of 'accountability turn') which complement existing definitions in the relevant political science literature, the author delivers the understanding of the evolutive character of democracy influenced by new trends and factors and takes optimistic approach regarding the transformative potential of democracy and accountability. Although the writing style is somewhat concentrated and this work requires certain acquaintance of the reader with political science and communicology as a prerequisite for optimally absorbing the book's contents, the author, through impressionable wording and accentuated significant points, manages to uphold expressive clarity and simplicity of the style to the end of making the work comprehensible even for the less advantaged scholars, broader public and professionals in the administrative field as well.

The high quality of the book is ensured by the author's holistic analytical argumentation and sound methodological approach, considering the abundant database of cases of accusation of incumbents, careful selection of representative countries and broad systematically gathered literature under which these cases are subsumed. A few general and several specific theories applied to the analyzed cases and the respective acquired primary data conclude the impression for the book. Summarily, the novelty and added value of the scientific approach lies in the particular sample of countries with certain democratic types, the book's specific juxtaposition of accountability, democracy and media, the vast database that has been analyzed as well as some newly-coined terms and systematization of notions due the generalization and synthetic method, thus comprehensively encircling a highly beneficial piece of political science work.